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Dr Michael Meyenburg

UIA Representative for Austria

Rechtsanwalt Representative of the UIA for Austria

Dr. Michael Meyenburg

Neustiftgasse 3

1070 Wien

Tel.: 01/526 33 00

Fax: 01/526 33 21

E-Mail: office@sla-mey.at

Federal Act Against Unfair Competition of 1984 (Bundesgesetz gegen den unlauteren Wettbewerb  
1984 – UWG) as annotated (Federal Gazette I Nr 79/2007)

## CHAPTER I

### CIVIL LAW AND CRIMINAL LAW PROVISIONS

#### 1. Acts of Unfair Competition

##### Unfair Commercial Practices

###### Section 1.

###### (1) Anyone who in the course of business

1. resorts to an unfair commercial practice or another unfair practise which is likely to distort not only insignificantly [=materially] the competition to the detriment of enterprises or
2. uses an unfair commercial practise contrary to the requirements of professional diligence and [which] is with regard to the respective product suitable to materially distort the economic behaviour of the average consumer whom it reaches or to whom it is addressed,  
may be sued for a cease-and-desist order and in case of fault for payment of damages.

(2) In case a commercial practise reverts to a group of consumers, the average member of such group will be deemed as the average consumer. Commercial practices against consumers which are likely to materially distort the economic behavior only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity, have to be assessed from the perspective of the average member of that group.

###### (3) Unfair commercial practices shall be in particular such, which are

1. aggressive in the sense of Section 1.a. or
2. misleading in the sense of Section 2.

###### (4) For the purposes of this Code the meaning is [defined as follows]:

1. "product": any goods or service including immovable property, rights and obligations;
2. "commercial practice": any act, omission, course of conduct or representation, commercial communication including advertising and marketing of an enterprise, directly connected with the promotion, sale or supply of a product;

3. "material distortion": of the economic behaviour of the consumer" means the use of a commercial practice to appreciably impair the consumer's ability to make an informed decision, thereby causing the consumer to take a transactional decision that he would not have taken otherwise;
  4. "code of conduct": an agreement or set of rules not imposed by law, regulation or administrative provision of a Member State of the European Union and which defines the behavior of enterprises who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors;
  5. "invitation to purchase": any commercial communication which indicates the characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase;
  6. "undue influence of a consumer": the exploitation of a position of power in relation to the consumer so as to apply pressure - even without using or threatening to use physical force - , whereby the consumer's ability to make an informed decision is significantly limited;
  7. "transactional decision of a consumer": any decision taken by such concerning whether, how and on what conditions he will undertake a 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, irrespective whether the consumer decides to act or to refrain from acting;
  8. "professional diligence": the standard of special skill and care of which one can reasonably presume that an entrepreneur may according to the honest market practice reasonably be expected to exercise in his field of activity.
- (5) In a procedure for a cease-and-desist order or for damages according to para 1-3 the entrepreneur has to prove the correctness of allegations of facts in connection with a commercial practice if such a claim seems under consideration of the justified interests of the entrepreneur and the other market participants due to the circumstances of the single case to be appropriate.

## Aggressive Commercial Practices

### Section 1a.

- (1) A commercial practice shall be regarded as aggressive if it is able to significantly impair the market participant's freedom of choice or conduct with regard to the product by harassment, coercion or undue influence, and to cause him to take a transactional decision that he would not have taken otherwise.
- (2) In determining whether an aggressive commercial practice is given, any onerous or disproportionate non-contractual barriers have to be taken into consideration with which the entrepreneur tries to hinder the consumer to exercise his contractual rights – especially the right to terminate the contract or to switch to another product or another enterprise.
- (3) In any case the commercial practices mentioned in the annex under lit 24 to 31 are deemed to be aggressive.

## Misleading Commercial Practices

### Section 2.

- (1) A commercial practice shall be regarded as misleading if it contains false information (Section 39) or otherwise is able to deceive a market participant in relation to the product on one or more of the following elements in such a way that he will be caused to take a transactional decision that he would not have taken otherwise:
  1. the existence or nature of the product;
  2. the main characteristics of the product or the material features of tests or checks carried out on the product;
  3. the extent of the commitments of the enterprise, the motives for the commercial practice, the nature of the sales process, any statements or symbols in relation to direct or indirect sponsorship or approval of the enterprise or the product;
  4. the price or the manner in which the price is calculated, or the existence of a specific price advantage;
  5. the need for a service, spare part, replacement or repair;
  6. the person, the attributes or rights of the enterprise or his agent, such as his identity and assets, his qualifications, status, approval, memberships or

relations as well as ownership of industrial, commercial or intellectual property rights or his awards and distinctions;

7. the rights of the consumer from warranty an guarantee or the risks he may face.

(2) In any case the commercial practices mentioned in the annex under lit 1 to 23 are deemed to be misleading.

(3) A commercial practice shall also be regarded as misleading if it is able to cause a market participant to take a transactional decision that he would not have taken otherwise, and which involves the following:

1. any marketing of a product, including comparative advertising, which creates a danger of confusion with a product or sign of enterprise of a competitor;

2. non-compliance with commitments, which the entrepreneur has in the framework of a code of conduct undertaken to be bound, insofar as:

a) the commitment is not aspirational but is firm and is capable of being verified, and

b) the entrepreneur indicates in a commercial practice that he is bound by the code.

(4) A commercial practice shall also be regarded as misleading if it, taking into account the limitations of the communication medium, omits material information that the market participant needs, to take an informed transactional decision and thereby is able to cause the market participant to take a transactional decision that he would not have taken otherwise.

(5) In any case the requests for giving information laid down in the Community law with regard to commercial communication [forms] including publicity and marketing are deemed to be material information in the sense of para 4.

(6) In the case of an invitation to purchase to consumers, the following information shall be regarded as material in the sense of para 4, if such information is not already apparent from the context:

1. the main characteristics of the product, to an extent appropriate to the medium and the product;

2. name and geographical address of the enterprise and, if applicable, of the enterprise on whose behalf it is acting;

3. the price inclusive all taxes and duties, or where such cannot reasonably be calculated in advance, the manner of it's calculation;

4. if applicable costs of freight, delivery and handling, or where such cannot reasonably be calculated in advance, the fact that such further costs may arise;

5. the arrangements for payment, delivery, performance as well as the complaint handling policy, if they depart from the requirements of professional diligence;

6. if they depart from the requirements of professional diligence;

7. if applicable the existence of a right of withdrawal.

(7) The claim for damages against persons who as a trade deal with the circulation of public announcements may only be undertaken if they did know the incorrectness of the statements, [and] against media enterprises

only if a duty to prove the announcements with regard to it's truth was given (Section 4 para 2).

## Comparative Advertising

### Section 2a.

(1) Comparative advertising shall be permissible, provided that it does not violate Sections 1, 1a, 2,7 or 9 (1) to (3).

(2) Furthermore, any comparative advertising which directly or indirectly identifies a competitor, or goods or services offered by a competitor, shall be permissible with regard to comparison only if:

1. in the case of goods with a designation of origin such advertising in all cases refers to goods of the same designation, or
2. the comparison refers to a special offer, and the closure date of the special offer and, if the special offer is not yet available, the commencement date of the period during which the special price or other special conditions will apply, are stated clearly and unequivocally.

(3) Any party who in the course of business violates Para 2 above may be sued for a cease-and desist order and in case of fault payment of damages.

(4) Section 1 para 5 applies by analogy.

### Section 3.

(1) If a potentially misleading representation is included in a notice published by a newspaper which notice is presented as a recommendation of another party's enterprise originating from the editorial staff, the publisher or owner of the newspaper may be sued for an order to cease and desist from publishing the notice.

(2) The right to sue (first sentence of Section 14) shall depend on the enterprise to which the recommending notice refers.

(Federal Law Gazette no. 74/1971, Article I Sub-para 2).

### Section 4.

(1) Any party who in the course of business for competitive purposes knowingly applies aggressive or misleading business practices in a public announcement or in a media (Section 1 para 1 lit1 Media Act), shall be sentenced by the court to a fine of up to 180 per diem rates.

(2) Where representations of the kind referred to in Para 1 above are published as announcements through media, the media enterprises are not obligated to verify such provided that the announcements are clearly marked as being paid [announcements].

(3) The offence shall be prosecuted only if so requested by a party entitled to file for a cease-and desist order under the first sentence of Section 14. Proceedings shall take place in such court as is competent to rule on media affairs. (Sections 40,41 para 2 an 3 Media Act).

(4) (repealed by Federal Law Gazette I No. 79/2007)

### Section 5.

Upon application of the prosecutor or the person entitled to prosecute it can be decided on confiscation under application of Sections 33 and 41 Media Act in analogy.

### Section 6.

(1) Sections 2 through 4 shall not be applicable to the use of names which in business serve to describe certain goods or services without intending to indicate their origin.

(2) With regard to the issue of whether a name has such a meaning in business, the court shall

obtain an expert opinion from the Federal Economic Chamber of Austria . In requesting the said opinion, the Federal Economic Chamber of Austria shall be granted a reasonable period for its preparation. If the period is not held, the proceeding shall be continued or concluded promptly.

(3) Paras 1 and 2 above shall not be applicable to names which, under existing regulations, may be used only to indicate the origin.

#### Disparagement of an Enterprise

##### Section 7.

(1) Any party who for competitive purposes alleges or disseminates facts about the enterprise of another, about the person of the owner or manager of the enterprise or about the goods or services of another which may be detrimental to the business of the enterprise or the credit standing of its owner shall be liable [to pay] damages to the injured [party] unless such facts are demonstrably true. The injured [party] may file a claim to cease and desist from alleging or disseminating the facts. The injured [party] may furthermore demand retraction and publication of the retraction.

(2) Where confidential information is concerned and the disclosing or receiving party has a legitimate interest in such information, any claim to cease and desist shall be permissible only when the facts have been alleged or disseminated contrary to the truth. Any claim for payment of damages may be asserted only when the disclosing party knew or was bound to know the untruthfulness of the facts.

#### Geographical Indications

##### Section 8.

(1) On the protection of geographical indications within the meaning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), Federal Law Gazette no. 1/1995, Annex 1C as amended in Federal Law Gazette no. 379/1995, the Sections 4 and 7 shall be applied - unless their protection is otherwise provided for pursuant to separate regulations - regardless of whether any actions referred to in such sections have been taken for competitive purposes.

(2) Para 1 above shall be also applied to geographical indications to identify the origin of services.

#### Misuse of Designations of an Enterprise

##### Section 9.

(1) Any party who, in the course of business, uses any name, [registered] company name or special designation of an enterprise or publication not subject to Section 80 of the Copyright Act in a manner that it is likely to be confused with a name, [registered] company name or special designation rightfully used by another party, may be sued by the latter party to cease and desist [from such action].

(2) The user shall be liable to compensate the injured party for any damage if the user knew or was bound to know that the abusive use was likely to cause confusion.

(3) The special designation of an enterprise shall also include such business signs and other facilities designed to distinguish the enterprise from other enterprises, including but not limited to the presentation of goods, their packaging or enveloping and of stationery, which are by the market participants involved perceived as designations of the enterprise.

(4) Supplementary to any claims accruing from any violation of designation rights pursuant to Paras 1 and 3 above of this Federal Act, Section 150 (1) and (2) b (reasonable consideration and surrender of profit) as well as Sections 151 (rendering of accounts) and 152 (2) (entrepreneur's liability) of the 1970 Patent Act, Federal Law Gazette no. 259 as amended, shall apply mutatis mutandis. Section 1489 of the Civil Code shall apply to all monetary claims and the claim for accounting. The limitation period for any and all such claims shall also be interrupted by an action for the rendering of accounts.

(5) Section 58 of the 1970 Trademark Act, Federal Law Gazette no. 260 as amended, shall apply mutatis mutandis with regard to the designations referred to in Paras 1 and 3 above.

## Bonuses

Section 9a. (1) Any party who in the course of business for competitive purposes:

1. announces in public advertisements or other notices designed to reach a larger group of persons that it grants free bonuses (premiums) to consumers in addition to goods or services, or that it offers, announces or grants free bonuses (premiums) to consumers in addition to periodic publications, or

2. offers, announces or grants free bonuses (premiums) to entrepreneurs in addition to goods or services, may be sued for a cease-and-desist order and payment of damages. This shall also apply when the gratuitous nature of the bonus is disguised by inclusive prices for goods or services, by fictitious prices for a bonus or by other ways.

(2) Para 1 above shall not apply if the bonus consists of:

1. usual accessories to the goods or usual ancillary performances,
2. merchandise samples,
3. advertising articles which are marked as such by a highly visible and permanent inscription of the advertising enterprise,
4. low-value gifts (premiums) or small items of little value, provided that the latter are not designed for assemblies the value of which exceeds the sum of the values of the individual items given,
5. a certain amount of money, or amount of money to be calculated by a certain method, which [money] is not enclosed with the goods,
6. a certain quantity or fraction of the quantity of the same goods,
7. the granting of information or advice, or
8. the granting of an opportunity to participate in a competition (promotional game) where the value of each participating card, calculated from the total value of the prizes to be won as a proportion of the participating cards issued (tickets), does not exceed €0.36, and the overall value of the prizes to be won does not exceed €21,600; this shall be allowed solely in the form of a separate participating card.

Lit. 8 shall not apply for bonuses added to periodic publications.

## Sale Against the Presentation of Customer Cards, Vouchers and Similar Facility

Section 9c.

Any party who:

1. issues customer cards, vouchers or similar facilities which entitle persons to repeatedly purchase goods, or
  2. sells goods against presentation of such cards,
- to persons who are consumers with regard to the goods involved, may be sued for a cease-and-desist order.

## Bribing of Employees or Agents

## Section 10.

(1) Any party who in the course of business for competitive purposes offers, promises or gives presents or other advantages to an employee or agent of an enterprise in order to receive preferential treatment with regard to the supply of goods or services for such party or for a third party by the unfair conduct of such employee or agent shall be sentenced by the court to a term of imprisonment of up to three months or a fine of up to 180 per diem rates.

(Federal Law Gazette no. 120/1980, Article I Subsection 4)

(2) The same punishment shall be meted out to the employee or agent of an enterprise who demands, obtains the promise of or accepts presents or other advantages in the course of business with a view to granting, by unfair conduct, preferential treatment vis-à-vis competitors to another party with regard to the supply of goods or services.

(3) Paras 1 and 2 shall not be applicable when the offence is punishable by the same or more severe punishment under other provisions.

(Federal Law Gazette no. 120/1980, Article I Subsection 5)

(4) The offence shall be prosecuted only if so requested by a party entitled to assert a claim for a cease-and-desist order under the first sentence of Section 14.

(Federal Law Gazette no. 74/1971, Article I Subsection 5)

Disclosure of Business or Trade Secrets.

Misuse of Entrusted Documents

## Section 11.

(1) Anyone who, as employee of an enterprise [and] during the duration of employment discloses without authorisation any business or trade secret which due to his employment has been entrusted or has been made accessible [to him], to another [party] for competitive purposes shall be sentenced by the court to a term of imprisonment of up to three months or a fine of up to 180 per diem rates.

(Federal Law Gazette no. 120/1980, Article I Subsection 6)

(2) The same punishment shall be meted out to the one who, without authorisation and for competitive purposes uses or discloses to others any business or trade secret which he has received by information as set forth in Para 1 above or by an act of his own which is illegal or contrary to public policy.

(3) The offence shall be prosecuted only upon request of the injured [party].

## Section 12.

(1) Anyone who, without authorisation and for competitive purposes, uses or discloses to another party any technical documents or requirements entrusted to him in the course of business shall be sentenced by the court to a term of imprisonment of up to three months or a fine of up to 180 per diem rates. (Federal Law Gazette no. 120/1980, Article I Subsection 7)

(2) Para 1 shall not be applicable when the documents or requirements have been entrusted by the owner of an enterprise to his/her employee.

(3) The offence shall be prosecuted only upon request of the injured [party].

Claims Under Civil Law in the Cases

Covered in Sections 10 through 12

## Section 13.



Anyone who violates any of Sections 10 through 12 may furthermore be sued for a cease-and-desist order and payment of damages.

## 2. General Provisions

### Claim for a Cease-and-desist Order

#### Section 14.

(1) In the cases set forth in Sections 1, 1a 2, 2a, 3, 9a, 9c and 10, a suit for a cease-and-desist order may be filed by any entrepreneur who manufactures or markets goods or services of the same or a similar kind (competitor) or by associations to promote the economic interests of entrepreneurs, provided that such associations represent interests which are affected by the offence. In the cases set forth in Sections 1, 1a, 2, 2a, 9a and 9c, a suit for a cease-and-desist order may also be filed by the Federal Chamber of Labour, the Federal Economic Chamber, the Presidential Conference of the Austrian Chambers of Agriculture, the Austrian Trade Union Federation or by the Feral Competition Authority. In the cases of aggressive or misleading commercial practices pursuant to Section 1 para 1 lit 2, para 2 to 4, Sections 1a or 2, a suit for a cease-anddesist order may also be filed by the Verein für Konsumenteninformation.

(2) If an offence in cases of aggressive or misleading commercial practises pursuant to Section 1 para 1 lit 2, para 2 to 4 originates in Austria, a suit for a cease-and-desist order may also be filed by any of the bodies and organisations of another European Union Member State published in the Official Journal of the European Communities by the Commission under Article 4 (3) of Directive 98/27/EC on injunctions for the protection of consumers' interests, OJ no. L 166 of 11 June 1988, p. 51, provided that:

1. the interests protected by such body in such Member State are affected; and
2. the purpose of the body as stated in the publication justifies such suit.

(3) Evidence for publication pursuant to Para 2 above shall be furnished upon filing of the suit.

### Claim for Information

#### Section 14 a

(1) Entrepreneurs, who offer postal or telecommunication services and who process for their commercial service activities names and addresses received by their users, are – upon written request (para 2) of one of the bodies capable to file suits according to Section 14 para 1 second and third sentence or the Schutzverband gegen unlauteren Wettbewerb, in case of a reasonable suspicion of an unfair practice of that user according to Sections 1, 1a or 2 - obliged to render this data in writing in an appropriate period of time. These [entrepreneurs] are only obliged to render information insofar as such data is without further inquiries available and is connected with a domestic mailbox or a domestic telephone number not registered in a listing of participants which is commonly accessible.

(2) The requirerer for information has – by otherwise loss of his right to rceiev information – to state in his request the reasons for his suspicion and has to lay down that he needs the data mentioned in para 1 for the prosecution of his rights against unfair commercial practices according to Sections 1, 1a or 2, that he [will] use such only in this respect and cannot receive such through commonly accessible means of information.

(3) The requirerer for information with the exception of the Federal Competition Authority has to reimburse appropriate costs for the rendering of information to the provider of services. He has also to hold him harmless for all possible claims of users that may arise from the rendering of information. He has to store a copy of the written request for the period of three years.

#### Section 15.

The claim for a cease-and-desist order shall also include the right to demand from the liable [party] the elimination of a condition which is contrary to the law, to the extent that the liable [party] has the disposition thereof.

### Scope of Liability for Damages



## Section 16.

(1) Anyone who, under this Act, is entitled to assert a claim for payment of damages may also demand damages for loss of profits.

(2) The court may furthermore award a reasonable amount of money in compensation for injuries suffered or other personal disadvantages if the special circumstances of a case justify such award.

## Liability of Several Persons Responsible for a Damage

## Section 17.

In the event that several persons are responsible for a damage to be compensated under this Act, such persons shall be jointly and severally liable.

## Provisions Concerning the Liability for Actions [Performed] at [the Place of Business of] an Enterprise

## Section 18.

The owner of an enterprise may be sued for a cease-and-desist order for an action which is illegal under Sections 1, 1a, 2, 2a, 7, 9, 9a, 9c, 10 (1), 11 (2) and 12 even if the action was performed by another person at the place of business of the owner's enterprise. The owner shall in such cases be liable for damages if the action was known or bound to be known to him.

## Section 19.

(1) The sentences provided for actions punishable under Sections 4, 10 (1), 11 (2), 12 shall be imposed on the owner of an enterprise also if he/she has wilfully failed to prevent such action being performed at the place of business of his/her enterprise by another person. (Federal Law Gazette no. 120/1989, Article I Subsection 10)

(2) (Note: repealed by Federal Gazette no I 79/2007)

(3) The penal provisions referred to in Para 1 above shall not be applicable to employees who have performed the action by order of their employer provided that due to their economic dependence they could not reasonably be expected to refuse performing the action.

## Time Limitations of Claims Under Civil Law

## Section 20.

(1) Claims for a cease-and-desist order under this Act shall be time-barred six months after the claimant has been informed of the violation and the person of the offender; and three years after the violation irrespective thereof.

(2) For as long as an illegal situation continues, the claim for its removal (Section 15) and the claim to cease and desist from the violation shall be maintained.

(Federal Law Gazette no. 120/1980, Article I Sub-para 11)

## Discontinuance of Illegal Notices in Publications

## Section 21.

(1) If a business communication or notice, whereof an enforceable writ of execution to cease and desist within the meaning of Sections 2, 2a, 7, 9 and 9a has been obtained, is published in a publication with regard to which the offender has no right of disposition, the court which is competent to grant the writ of enforcement may, upon the plaintiff's application, order (Section 355 of the Enforcement Act) the owner of the enterprise concerned with printing or distribution of the publication (publisher or owner of the newspaper) to discontinue further

publication of the communication or notice in the numbers, issues or circulations of the publication published after service of the order or, if the publication contains only the said communication or notice, to discontinue its further distribution.

(2) This measure may also be ordered as a preliminary injunction within the meaning of Section 382 of the Enforcement Act, subject to the provisions of the Enforcement Act, upon application by the endangered party. Section 24 shall apply.

(3) Any claim for payment of damages due to the applicant for violation of the order (Section 355 of the Enforcement Act) shall be governed by Section 16.

Section 22. (Cancelled including its heading; Federal Law Gazette no. 135/1983, Article XVII Section 3 Subsection 3; Article V Para 2 of the promulgation)

Section 23. (Cancelled including its heading; Federal Law Gazette no. 135/1983, Article XVII Section 3 Subsection 3; Article V Para 2 of the promulgation)

#### Preliminary Injunctions

Section 24.

Preliminary injunctions may be issued in order to secure the claims to cease and desist as set forth in this Act even if the preconditions referred to in Section 381 of the Enforcement Act do not apply. (Federal Law Gazette no. 135/1983, Article XVII Section 3 Subsection 3)

#### Publication of Sentence

Section 25.

(1) In the cases of Sections 4 and 10, publication of the sentence may be ordered at the expense of the sentenced party.

(2) In the cases of Sections 4 and 10, the court may, upon application by the acquitted party, authorise such party to have the acquittal published at the expense of the plaintiff in the private prosecution within a specified period of time. (Federal Law Gazette no. 120/1980, Article I Subsection 12)

(3) Where, except in the cases of Sections 11 and 12, a suit for a cease-and-desist order is undertaken, the court shall, upon application, authorise the prevailing party, if such [party] has a legitimate interest in it, to have the sentence published at the opposing party's expense within a specified time limit. (Federal Law Gazette no. 120/1980, Article I Subsection 12)

(4) The publication shall comprise the wording of the sentence. The manner of publication shall be defined in the sentence. (Federal Law Gazette no. 120/1980, Article I Subsection 12)

(5) In civil proceeding[s], the court may, upon application by the prevailing party, define a text of the publication which varies from or supplements the scope or wording of the sentence. Such application shall be filed not later than four weeks after the sentence has become final. If such application is only filed after the end of the [first instance] hearing, it shall be decided by the court of first instance by an order after the sentence has become final. (Federal Law Gazette no. 120/1980, Article I Subsection 12)

(6) Upon application of the prevailing party, the court of first instance shall specify the costs of publication and shall order the opposing party with the reimbursement. Upon application of the prevailing party, [the court] can order the losing party to a prepayment of the presumable costs for publication in a period of four weeks. From an order of prepayment of [publication] costs has to be refrained if the losing party certifies that the circumstances of its income and property do not suffice such a payment for the time being. The course of the time period for the publication of the sentence shall be stayed by the application for the deposit of the

presumable costs of publication until the day of the arrival of the prepayment or the dismissal of this application. After publication was effected the prevailing party has under notification of the actual accrued costs to refund to the losing party an exceeding amount including interest.

(7) Publication based on a final sentence or another enforceable writ of execution shall be made by the media entrepreneur without any unnecessary delay. (Federal Law Gazette no. 120/1980, Article I Subsection 12)

General Public to Be Excluded

Section 26.

Upon application, the general public may be excluded from the trial of a [penal] charge or hearing of a claim under civil law based on this Act if a public hearing would endanger a business or trade secret.

## CHAPTER II

### PROVISIONS UNDER ADMINISTRATIVE LAW

#### 1. Prohibition of Closing Contracts Under the Snowball Sales System and of Game-of-chance-like Forms in the Distribution of Goods

Section 27.

(1) It shall be prohibited for a business operation to enter into contracts under the so-called snowball sales system.

(2) The term shall be understood to mean arrangements whereby the customer is promised delivery of a good or performance of a service against a remuneration unconditionally to be performed under the condition that the customer, by means of the orders or vouchers handed over to him, finds for the enterprise of the promising or of another [party] other purchasers who enter into the same contractual relationship with such enterprise.

(3) Any contract of this kind entered into between the businessman and the customer or between the customer and a third party shall be null and void.

(4) The customer's performance may be reclaimed against renouncing delivery of the good or rendering of the service or against return of the good received.

(5) Clause 14 of the annex remains unaffected hereby.

Section 28.

It shall be prohibited to market goods or services in such a manner that delivery of the good or rendering of the service is linked to the result of a lottery or another chance event.

Section 28a.

(1) It shall be prohibited to advertise, in the scope of business and for the purpose of competition, for registrations in directories, such as the yellow pages, telephone or similar registers, by way of a payment forms, money order forms, invoices, offers for correction or in a similar manner or to offer such registrations in such a way directly without unequivocally and also by clear graphical means pointing out that such [advertisement] is solely an offer for a contract.

(2) Clause 21 of the annex remains unaffected hereby.

Section 29.

(1) It shall be prohibited to invite any party to enter into a contract prohibited in Sections 27 and 28 in the course of business by sending invitations, vouchers, etc. or by any written notice whatsoever designated to reach a larger group of persons.

(2) Anyone who acts against this prohibition or against the prohibitions set forth in Sections 27, 28 and 28a shall – insofar as the offence shall not constitute the matter of a penal offence [to be handled] by court - be deemed to commit an administrative offence and shall be punished by a fine of up to €2,900 imposed by the District Administrative Authority.

## 2. Prohibition of Reference to Assets of Bankrupt Estates When Selling Goods

### Section 30.

(1) If in public advertisements or notices designated to reach a larger group of persons the sale of goods is announced which stem from a bankrupt estates but are no longer part of such estates, any reference to the origin of the goods from a bankrupt estate shall be prohibited.

(2) Any party who violates this prohibition shall be deemed to commit an administrative offence and shall be punished by a fine of up to €2,900 imposed by the District Administrative Authority.

## 3. Arrogation of Awards and Privileges

### Section 31.

(1) It shall be prohibited when operating an enterprise to arrogate for the owner or enterprise an award which is not due to them, or to wrongfully attribute the holding of a qualification, authorisation or permit approved or awarded by a government authority, or to use an award or designation which makes reference to any of the above privileges so that such action is likely to deceive about the occasion or reason for conferral of the award or the scope of the privilege.

(2) Regulations may be passed by an ordinance which specify which awards and which designations concerning the privileges set forth in Para 1 above may be used in operating an enterprise and in which manner the permitted use shall be admissible.

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(3) Anyone who violates the prohibition set forth in Para 1 above and the regulations of ordinances passed under Para 2 above shall be deemed to commit an administrative offence and shall be punished by a fine of up to €2,900 imposed by the District Administrative Authority.

(4) Clause 2 of the annex remains unaffected hereby.

## 4. Regulations Concerning Marking

### Section 32.

(1) With an ordinance may be issued to order that certain goods may be commercially offered for sale or otherwise marketed:

1. only in stipulated quantities, packaging or on condition that a certain ratio be observed between the packaging size and the filling quantity,
2. only with the marking of:
  - a) the name (firm name) and principal place of business of the producer or dealer,
  - b) the quantity (weight, dimensions, number [of pieces]),
  - c) the characteristics (including data essential for their use),
  - d) data essential for their proper use and care, and
  - e) the geographical origin.

(2) With ordinance may be issued to order that certain services may be commercially offered or

rendered:

1. only in stipulated unit quantities (including but not limited to unit work, unit dimensions or unit times),
2. only with the marking of:
  - a) the name (designation) and principal place of business of the party offering or rendering the service,
  - b) the quantity (including but not limited to work, dimension, time),
  - c) the characteristics (including data essential for the recipient of the service), and
  - d) the price.

Subsection 2 d) shall not apply to services offered subject to the Trade, Commerce and Industry Regulation Act of 1973 as amended.

(3) The ordinances issued under Paras 1 or 2 above may define how the characteristics are to be determined; hereby the applicable state of the art shall be taken into account. The ordinances may also stipulate how, where (in the case of goods preferably on the said goods) and when the mandated markings are to be applied and define their content as well as any deviations or exceptions permitted because of the characteristics of the goods or services or because of special conditions, and monitoring measures suitable to ensure observance of the ordinance. Depending on the kind of goods or services, the ordinances may refer to all or individual marking features. Ordinances under Para 1 above may furthermore be restricted to goods designed to be taken [from their shelves] by customers. Regulations to mark goods may also include the provision that the manufacturer or importer is solely responsible for their observance.

(4) In Ordinances under Para 1 above may be specifically defined the relevant permissible limits for goods, the weight or size of which normally shrinks during storage due to their special nature.

(5) Specific designations for goods and services may be stipulated, permitted or prohibited by ordinance. Such an ordinance shall be subject to the above paragraphs to the extent applicable.

(6) Paras 1, 3 and 5 above shall be applicable to food, products designed for human consumption and food additives only to such extent as it is possible to stipulate by ordinance that such goods be offered for sale or otherwise marketed only in prescribed unit quantities or only by the marking of the price in terms of specified unit weights or unit quantities.

### Section 33.

(1) Anyone who violates the regulations of an ordinance passed under Section 32 shall be deemed to commit an administrative offence and shall be punished by a fine of up to €2,900 imposed by the District Administrative Authority.

(2) Any punishment for violation of a Marking Ordinance passed under Section 32 shall find for application of the omitted proper marking on the objects which are at the offender's disposal, if necessary after removing an existing improper or illegal marking or the envelope or packaging carrying the objects or, if neither is possible, for confiscation of the said objects.

(3) If an ordinance passed under Para 5 of Section 32 has been violated, in the event of punishment removal of the improper or illegal designation or application of the omitted proper designation of the objects which are at the offender's disposal or, if this is not possible, their confiscation shall be ordered.

(4) In order to secure the measures, which shall be executed at the convicted offender's expense, the District Administrative Authority may order, already in the course of the proceedings, confiscation of those objects which, due to their characteristics not meeting the stipulations of the ordinance, have caused the offence to be committed.

(5) If prosecution or sentencing of a specific person is not permissible or not feasible, the orders permitted under Paras 2 through 4 above may be issued independently for the objects designed for

business transactions. The order, which shall be notified to all parties involved, may be appealed against by any of the parties involved.

(6) An appeal lodged against confiscation (Para 4 or 5 above) shall not suspend the effect of the order.

#### 4a. Announcement of Sales

Section 33a. (1) Announcement of a sale within the meaning of this Federal Act shall mean all public advertisements or notices designed to reach a large group of persons which allow drawing the conclusion that a party intends to clear in the form of a retail sale large quantities of goods, and which are likely to make the impression that the businessman is forced by special circumstances to sell quickly and therefore offers the goods at extraordinarily advantageous conditions or prices. Any advertisement or notice using [the German equivalents of ]“sale”, “liquidation sale”, “clearance sale”, “quick sale”, “sale at bargain prices”, “stock clearance” or wording to such effect shall also be deemed to be an announcement of a sale.

(2) The provisions of Sections 33a through 33e, however, shall not apply to advertisements and notices concerning end-of-season sales, seasonal clearance sales, stocktaking sales or similar sales and special sales customary in the relevant line of business and at given seasons (e.g. “white sale”, “coat bargain week”).

(3) Clause 7 of the annex remains unaffected hereby.

#### Section 33b.

Announcement of a sale shall be permissible only when it is authorised by the District Administrative Authority which is competent for the location of the sale. The application for a permit shall be filed in writing and shall include the following information:

1. the goods to be sold, broken down by quantity, characteristics and selling value;
2. exact location of the sale;
3. the period in which the sale is to be held;
4. the reasons why the sale is to be held, such as death of the owner of the business, discontinuance of the business or of a certain category of goods, relocation of the business, acts of God, etc.;
5. where the trade is practised by a lessee, the lessor’s consent to the announcement of a sale when approval of the application will result in termination of the trade licence under Para 1 of Section 33e, or partial termination of the trade licence under Para 3 of Section 33e.

#### Section 33c.

(1) Before deciding on the application, the District Administrative Authority shall request the Provincial Economic Chamber competent for the location of the sale to furnish an expert opinion within two weeks.

(2) The District Administrative Authority shall decide on the application within one month of receiving it.

(3) A permit shall be refused if no reasons within the meaning of Subsection 4 of Section 33b have been given or if the sale is not to be announced for a continuous period. A permit shall also be refused if the sale is to be held at some time between the penultimate week before Easter and Whitsuntide or between November 15 and Christmas or for more than six months, except in the cases of the businessman’s death, acts of God or other cases which merit similar consideration. If the business has been established for less than three years, a permit shall be given only in the case of the businessman’s death, acts of God or other cases which merit similar consideration.

(4) The permit shall in its award include the following information:

1. the goods to be sold, broken down by quantity, characteristics and selling value;
2. the exact location of the sale;
3. the period during which the sale is to be held;
4. the reason for which the sale is to be held.

Section 33d.

(1) Any announcement of a sale shall include the reason for the accelerated sale, the period during which the sale is to be held, and a general designation of the goods to be sold. This information must correspond to the permit.

(2) No further announcement of a sale may be made upon expiry of the sales period as stated in the permit.

(3) During the sales period stated in the permit, sale of the goods designated in the announcement shall be permitted only in the quantity identified in the permit. No further supply of goods of these kinds shall be allowed.

(4) If the District Administrative Authority has found any violation of Para 3 above it shall immediately order the businessman to cease and desist from any further announcement, notwithstanding the punishment.

Section 33e.

(1) If the permit for an announcement was granted because of complete discontinuance of the business, the trade licence or the right to exercise the trade underlying the sales activity in the further place of business shall terminate upon expiry of the sales period stated in the permit. For the next three years, the owner of the trade licence and, in the event that the trade is leased, the lessee shall not be permitted to open or lease a similar operation in the municipality of the former location or to invest in such an operation in a way which may yield a profit to them. If the holder of the permit is a partnership under commercial law or a registered company of professionals [in German: eingetragene Erwerbsgesellschaft], the prohibition shall also apply to the personally liable partners. If the holder of the permit is a legal entity, the prohibition shall also apply to persons who exercise a decisive influence on the operation of the business of the legal entity. For the said period, they shall not become personally liable partners or limited partners of a partnership under commercial law or a registered company of professionals which exercises or has a lessee exercise a similar trade in the municipality of the former location.

(2) The District Administrative Authority may approve exceptions from the prohibition of Para 1 above in the event of a change, not caused by the intervener, in the circumstances which were relevant for discontinuance of the business or if the failure to grant an exception would cause serious economic disadvantages to the intervener. Before a decision is reached on such an application, the Provincial Economic Chamber competent for the location shall be requested to furnish an expert opinion within four weeks.

(3) Paras 1 and 2 above shall apply mutatis mutandis if the permit has been granted due to the discontinuance of a certain category of goods.

(4) Paras 1 through 3 above shall also apply mutatis mutandis if a party announces a sale without having first obtained a permit. The respective trade licence in this case shall terminate with the actual termination of the announcement of the sale; the District Administrative Authority shall determine termination by means of an order.



Section 33f.

Any party who violates the provisions of Sections 33b, Paras 1 through 3 of 33d and Paras 1, 3 and 4 of 33e shall be deemed to commit an administrative offence and shall be punished by a fine of up to €2,900 imposed by the District Administrative Authority. Violation of Para 3 of Section 33d shall carry the additional punishment of confiscation of the goods supplied subsequently.

5. General Provisions to Sections 27 through 33f

Section 34.

(1) The punishments threatened to offenders in this Chapter shall also be imposed on any party who instigates another party to commit the offence or who aids and abets another party in committing the offence. Section 19 shall be applicable accordingly.

(2) No administrative offence shall have been committed if any action referred to in Para 2 of Section 29, Para 2 of Section 30, Para 3 of Section 31, Para 1 of Section 33 and Section 33f is an element of a punishable offence which falls within the competence of the courts.

(3) Any party who violates the regulations of this Chapter may be sued for a cease-and-desist order and, in case of fault, for payment of damages, notwithstanding criminal prosecution. Any such claim may be asserted only before the ordinary [civil] courts. Sections 14 through 18 and 20 through 26 shall be applied accordingly.

6. Retention of Goods by Customs Offices

Section 35.

Customs offices may, subject to more detailed regulations to be issued by an ordinance, retain goods which do not meet an ordinance passed under Section 32 upon their import or export until receiving any dispositional instructions therefor from the District Administrative Authority. (Federal Law Gazette no. 74/1971, Article I Subsection 9)

Section 36.

(1) Customs offices may, subject to more detailed regulations to be issued by an ordinance, retain goods which on themselves or on their packaging or envelope carry designations or inscriptions which constitute wrongful declarations of the geographical origin or characteristics of the goods, even if the goods are not subject to any marking rule issued under Section 32, upon their import or export for the purpose of removing the wrongful designation or inscription until receiving any dispositional instructions therefor from the District Administrative Authority. (Federal Law Gazette no. 74/1971, Article I Subsection 9)

(2) The removal of the designation or inscription shall be ordered and executed by the District Administration Authority competent for the district in which the goods have been retained. Paras 3 through 6 of Section 33 shall be applicable accordingly. More detailed regulations concerning the procedure to be observed by the District Administration Authority shall be passed by an ordinance. (Federal Law Gazette no. 74/1971, Article I Subsection 9)

Section 37.

(1) The customs office shall allow the party having the disposal of the goods an opportunity to repair the defect which is the cause for the retention under Sections 35 and 36. (Federal Law Gazette no. 120/1980, Article I Subsection 16)

(2) If the defect is repaired in due time the goods shall be released. If not, the District Administration Authority competent for the district in which the goods have been retained shall be promptly notified of the retention and the facts of the case. (Federal Law Gazette no. 120/1980, Article I Subsection 16)

(3) The District Administration Authority shall promptly inform the customs office which has retained the goods of any dispositions made with regard to the notification. (Federal Law Gazette no. 74/1971, Article I Subsection 9; Federal Law Gazette no. 120/1980, Article I Subsection 17)

(4) These regulations shall be without prejudice to the application of the provisions concerning punishment for customs offences. (Federal Law Gazette no. 120/1980, Article I Subsection 17)

## CHAPTER III

### JOINT AND FINAL PROVISIONS

#### Application of the Act to Farming and Forestry Produce and Services

Section 38. Goods within the meaning of this Act shall also include farming and forestry produce, and services and economic interests shall also include farming and forestry services and interests.

#### Illustrations and Other Activities

##### Section 39.

(1) Allegations and representations within the meaning of this Act shall also include illustrations and other activities which are designed and suitable to substitute verbal representations.

(2) Any addition, omission, restriction, change or other activity of such kind or form as to escape observation or notice if no special attention is observed shall not preclude application of this Act in the event of any action prohibited under this Act.

#### Protection of Foreigners

##### Section 40.

Nationals of foreign countries who have no principal place of business in Austria shall, unless international agreements are in existence, be entitled to the protection awarded by this Act only to such extent as, according to a notice in the Federal Law Gazette, the state in which they have their principal place of business awards similar protection to Austrian citizens. (Federal Law Gazette no. 74/1971, Article I Subsection 12)

#### Right of Retaliation

##### Section 41.

If a foreign country treats goods originating from the territory in which this Act is applicable less favourably upon their import or transit than goods of other countries, the Federal Government may pass an ordinance to apply the right of retaliation.

#### Transitional Provisions

##### Section 42.

(1) With regard to any suits filed under Section 9 prior to the entry into force of the Federal Act of Federal Law Gazette I no. 111/1999, this Federal Act shall continue to be applied in the version effective prior to the entry into force of the Federal Act of Federal Law Gazette I no. 111/1999.

(2) The five-year period regulated, in connection with Section 9 (5), in Section 58 of the 1970 Trademark Protection Act of Federal Law Gazette no. 260 as amended shall, with regard to any claims existing against the owner of a brand registered prior to the entry into force of this Federal Act of Federal Law Gazette I no. 111/1999 or labelling right acquired prior to this date, commence upon the entry into force of this Federal Act of Federal Law Gazette I no. 111/1999. Any limitation shall be unaffected by this provision.

Section 43.

(1) This Act shall be executed by the Federal Ministers of Economic Affairs, of Finances, of Agriculture and Forestry and of Justice; with regard to the passage of ordinances under Section 32, to the extent that foodstuffs, products designed for human consumption and food additives are concerned, in agreement with the Federal Chancellor.

(2) Enactment of any ordinance under the second Chapter of this Act shall be preceded by a hearing of such bodies which are legally charged with representing the relevant interests.

Entry into Force

Section 44.

(1) Sections 2 (1) through 6, 28a, 29 (2) and 43 (1) as amended in the Federal Act of Federal Law Gazette I no. 1985/1999 shall enter into force on 1 April 2000.

(2) Section 14 as amended in the Federal Act of Federal Law Gazette I no. 185/1999 shall enter into force on 1 January 2001.

(3) Section 8 as amended in the Federal Act of Federal Law Gazette I no. 111/1999 shall retroactively enter into force on 1 January 1996, provided that in this respect Section 4 shall not be applied until the Federal Act of Federal Law Gazette I no. 55/2000 has entered into force.

(4) Section 32 (1) as amended in the Federal Act of Federal Law Gazette I no. 55/2000 shall enter into force on 1 September 2000.

(5) Sections 9a (2) 8, 29 (2), 30 (2), 31 (3), 33 (1) and 33f as amended in the Federal Act of Federal Law Gazette I no. 136/2001 shall enter into force on 1 January 2002.

(6) Section para 1 as amended in the Federal Act of Federal Law Gazette I no. 106/2006 shall enter into force on the day following promulgation.

(7) Sections 1, 1a, 2, 2a, 3 Abs. 1, 4 para 1 through 3, 5, 6 para 2, 8 para 1, 14 para 1 and 2, 18, 21, 27 para 5, 28a, 31 para 4, 33a para 3, 45 and the appendix as amended in the Federal Act of Federal Law Gazette I no. 79/2007 shall enter into force on December 12, 2007 in Kraft. Sections 4 para 4, 6a and 19 para 2 shall be repealed with December 12, 2007. Reference to Community Law

Section 45. By this Federal Act following Directives shall be implemented into Austrian Law:

1. Directive 2005/29/EC concerning unfair business practices, OJ no. L 149 as of 11/06/2005 P. 22.
2. Directive 2006/114/EC as of December 12, 2006 concerning misleading and comparative advertising (codified version), OJ no L 376 as of 27/12/2006 P. 21.

Annex

Misleading commercial practices

1. The false declaration of an entrepreneur claiming to be a signatory to a code of conduct.
2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.
3. The false claim that a code of conduct has an endorsement from a public or other body.
4. The claim that an enterprise (including its commercial practices) or a product has been approved, endorsed or authorised by a public or private body when it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.
5. [Making] the invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the entrepreneur may have for his belief that he will not be able to offer for supply or to procure another enterprise 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 (bait advertising).

6. [Making] the invitation to purchase products at a specified price and then:  
 (a) refusing to show the advertised item to consumers;

or

(b) refusing to take orders for it or deliver it within a reasonable time;

or

(c) demonstrating a defective sample of it, with the intention of promoting a different product (bait and switch)

7. The untrue statement that the 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 or time to make an informed choice.
8. Undertaking to provide after-sales service to consumers with whom the enterprise has communicated prior to a transaction in a language which is not an official language of the Member State where the enterprise 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. The untrue statement or otherwise creating the untrue 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 enterprise's offer.
11. Using editorial content in the media to promote a product where an enterprise has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).
12. The untrue statement concerning the nature and extent of the risk to the personal security of the person promoted or his family in case he does not purchase the product.
13. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the person promoted into believing that the product is made by that same manufacturer when it is not.
14. Establishing, operating or promoting a pyramid promotional scheme (Article 27) where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of new consumers into the scheme rather than from the sale or consumption of products.
15. The untrue statement that the entrepreneur is about to cease his operation or move premises.
16. The untrue statement that products are able to facilitate winning in games of chance.
17. The untrue statement that a product is able to cure illnesses, dysfunction or malformations.
18. Untrue informations 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 normal market conditions.
19. The offer of 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 [person] promoted has to pay further costs than the unavoidable costs of responding to the commercial practice and collecting or paying for delivery of the item.
21. The inclusion of an invoice or similar document in marketing materials seeking payment which gives the [person] promoted the impression that he has already ordered the marketed product [- when he has not -].
22. The untrue statement or the creation of the untrue impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representation as consumer.
23. The creation of the untrue 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. Aggressive commercial practices
24. The creation of the impression that the [person] promoted cannot leave the premises until a contract is formed.
25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, to enforce a contractual obligation.
26. The promotion of customers by persistent and unwanted solicitations over telephone, fax, e-mail or other remote media except in circumstances and to the extent justified by law to enforce a contractual obligation. This is without prejudice to Article 10 of Directive 97/7/EC and Directives 95/46/EC [2] and 2002/58/EC.
27. The request to a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.

28. The inclusion of a direct exhortation to children in an advertisement to buy advertised products or to persuade their parents or other adults to buy advertised products for them.
29. The demand to a consumer for immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer (not ordered products and services).
30. The explicit information towards the consumer that if he does not buy the product or service, the job or livelihood of the entrepreneur will be in jeopardy.
31. The creation of the untrue impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either:
  - there is no prize or other equivalent benefit,

or

- the possibility of the consumer taking actions to claim the prize or other equivalent benefit is subject to the payment of an amount [of money] or the take over of costs that surpass [mere] postal or standard tariff telephone charges.

#### Article IV

##### Implementation

(Note: ad Federal Law Gazette no. 448/1984)

This Federal Act shall implement into national law Directive 97/7/EC on the protection of consumers in respect of distance contracts, OJ L 144 of 4 June 1997, p. 19; Directive 97/55/EC amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, OJ L 290 of 23 October 1997, p. 18, Directive 98/27/EC on injunctions for the protection of consumers' interests, OJ L 166 of 11 June 1998, p. 51; and Directive 99/34/EC amending Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.