

International Handbook on Unfair Competition BY FRAUKE **HENNING-BODEWIG**, ed. [Oxford: Hart Publishing, 2013 (co-published by Verlag C.H. Beck, Hart Publishing and Nomos Verlagsgesellschaft). xxxiv + 653 pp. Softcover: £214.00]

The law of unfair competition stands at the intersection between several spheres of law: these include tort law, antitrust law, intellectual property law, consumer protection law and various statutory regimes regulating specific areas of commercial conduct. Given the divergence between the legal traditions of different legal systems, particularly between the common law and civil law based jurisdictions, the organisational structure of this area of the law varies dramatically from country to country. The scope of unfair competition encompasses areas of conduct as diverse as product design, sales, advertising, marketing and other commercial dealings with a trader's competitors, customers, and parties upstream or downstream from the business. While all these legal systems recognise the importance of regulating the behaviour of traders in the marketplace to ensure compliance with their respective ethical norms of fair conduct and honesty, their individual approaches towards responding to these issues depend very much upon the architecture of their respective legal regimes.

Given the expansive scope of the types of legal prohibitions that might come under the banner of 'unfair competition'—including acts of imitation, deception, disparagement, misappropriation, misrepresentation, breach of confidence and other

dishonest or unethical commercial practices—this is an area of law that is particularly difficult to rationalise within an overarching conceptual framework. The complex nature of the subject is compounded by the fact that some segments are located within the private law realm, where enforcement relies on private actions undertaken by injured competitors, while other segments are enforced by public authorities and regulatory agencies which may be guided by consumer protection and public interest considerations. Some countries, influenced by civil law traditions, have gone down the path of regulating unfair competition by means of a general statutory clause against such conduct, such as the *action en concurrence déloyale* in France, while others have preferred to develop specific sets of rules for specific kinds of commercial conduct that might be regarded as unfair. This makes it very challenging for legal scholars from one jurisdiction to navigate through the unfair competition landscape of another, unfamiliar, jurisdiction because of the fundamentally different ways in which each country has responded to unfair competition as a legal problem. However, with the publication of this book, such an enterprise may not appear as daunting as before.

This book provides readers with a comparative overview of the unfair competition laws of 21 countries, across six continents, with substantial coverage of the relevant laws of the major developed economies in North America and Europe. An impressive array of 25 authors, including the editor of the book, have contributed to this 26-chapter volume—a distinguished group comprising senior and junior law academics, legal practitioners and researchers from all over the world. There are four main sections in the book. The first section introduces the historical roots of unfair competition law and its relationship with other more established spheres of law. The second and third sections explore the international and regional legal instruments concerned with regulating acts of unfair competition, including the major intellectual property conventions (the *Paris Convention for the Protection of Industrial Property*, 20 March 1883, 828 U.N.T.S. 305, 21 U.S.T. 1583, administered by the World Intellectual Property Organisation; the *Agreement on Trade Related Aspects of Intellectual Property Rights*, 15 April 1994, 1869 U.N.T.S. 299, 33 I.L.M. 1197, administered by the World Trade Organisation), European Union Directives (e.g., EC, *Commission Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')*, [2005] O.J. L 149/22, and EC, *Commission Directive 2006/114/EC of 12 December 2006 concerning misleading and comparative advertising*, [2006] O.J. L 376/21) and non-European trade agreements with provisions that require their signatories to address unfair competition issues. The fourth section, which comprises the bulk of the volume, contains 21 country reports which map out the relevant legal terrain in Australia, Austria, Brazil, Canada, China, France, Germany, Hungary, India, Italy, Japan, Lithuania, Netherlands, Poland, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States of America.

There are at least three broad reasons why this book should be regarded as a welcome addition to any law library. First, it gives easy access to a wide variety of legal jurisdictions, many of whose laws are only comprehensible to those familiar

with their respective native languages, to an English-reading audience. In addition, key legal terms in French and German, for example, are identified and explained in English to give the reader a more nuanced understanding of the jurisprudential contours of these legal systems. Furthermore, each country report includes a very substantial bibliography of reference materials relevant to the unfair competition laws of that particular jurisdiction. Secondly, despite the relatively modest length of each country report, the authors have succeeded in providing the reader with a sufficiently comprehensive picture of the different facets of their respective unfair competition law regimes. General clauses in statutes are analysed alongside leading case law from national and, in the case of Europe, supranational tribunals. Activity-specific regulations dealing with diverse practices, from ambush marketing to comparative advertising, and from trademark dilution to consumer protection regulations, are also examined in some detail. Thirdly, through the first few chapters of this book, the editor has done a very commendable job of constructing a helpful conceptual and thematic framework for understanding the many different moving parts that make up the machinery behind each country's unfair competition laws. Seen through the different subject matter lenses of other adjacent areas of law—tort law, intellectual property law, consumer protection law and antitrust law—a more holistic understanding of unfair competition law emerges. Unfair competition law is presented as a legal framework supported by multiple pillars: an interest in protecting honest entrepreneurs, an interest in protecting consumers from conduct that might distort their purchasing decisions, an interest in facilitating market efficiency and so forth.

One hopes that the collaborative efforts behind this book will continue beyond its publication so that future editions of this valuable repository of legal information may materialise. Developments in the law of unfair competition should interest a wide spectrum of readers within the international legal community, including legal scholars, students and practitioners working in the fields of tort law, intellectual property law, antitrust law and consumer protection law. Should such a future edition of this book come to fruition, this reviewer would suggest the following refinement—instead of arranging the country reports alphabetically, perhaps they could be categorised according to the organisational approaches they have adopted (*viz.* 'general clause' or activity-specific rules?) towards their national unfair competition laws, or perhaps their policy attitudes (*viz.* welcoming or sceptical?) towards this frequently nebulous, and occasionally controversial, sphere of law. This could spark off further inquiry into other interesting questions relating to the similarities and differences between the unfair competition law frameworks of the jurisdictions examined—for example, do the Commonwealth countries have unfair competition laws similar to those found in the United Kingdom, or have the legal systems of the former French or Dutch colonies inherited 'French-style' or 'Dutch-style' approaches to tackling this issue? To what extent has the absence of the influence of European law affected the development of unfair competition law in these non-European countries?

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