

The New German Act Against Unfair Competition under the Influence of EU Unfair Commercial Practices Directive—Focusing on the Consumer Protection

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Abstract

In 2008, the German Act Against Unfair Competition (UWG) was thoroughly amended in order to harmonize with the EU Directive 2005/29/EG concerning unfair business-to-consumer commercial practices in the internal market. The EU directive is an important piece of legislation in the field of consumer protection. The directive uses “unfair commercial practices” as the basic principle, under which misleading and aggressive commercial practices are deemed as unfair.

The implementation of the directive has qualitatively changed the UWG, which added many provisions solely for the purpose of protecting consumers, such as the black list of per se prohibited commercial practices. By regulating “trade practices,” instead of the old concept of “competitive practices,” the application of the UWG will extend to all practices in market. Key provisions of the UWG, such as § 3 (general clause), § 5 (misleading advertising) and § 7 (harassment) etc., are also substantially revised. In addition, the UWG includes regulations regarding the performance of contract and other practices after the conclusion of contract. As a result, it blurs the line between competition law and contract law. After the 2008 revision, the main function of the UWG is now broadened to control unfair trade practices, not merely unfair competitive practices. In other words, it becomes a fair trade law (Lauterkeitsrecht).

This article provides an overview of the EU directive and the new UWG. If the EU directive and the UWG represent a new trend which focuses on unfair trade practices and emphasizes more on consumer protection, whether and how the Taiwan Fair Trade Law should respond to this movement are also discussed herein.

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