Poland: Unfair Competition Law

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1. Introduction

With respect to the topic of this article, reference must be made to two extraordinarily important events in recent Polish history: above all to the unusual phenomenon of the 20th century in the form of the major social movement “Solidarność”, which triggered radical political changes in Poland and in other countries of eastern and central Europe. The consequence of this movement was the transformation of the centrally controlled economy into an economic system based on private property and competition. Market economy institutions have been created in Poland. The privatisation process of state enterprises has continued without interruption, with the result that today the majority of these businesses are present on the market as private economy enterprises. This event also had extensive consequences for the development of the Polish legal system. This includes the “rebirth” of the Law on the Combating of Unfair Competition, which was devoid of all importance in the period of the centrally controlled real socialist economy. Even though the Law against Unfair Competition of 1926 remained formally in effect, it was enforced neither by the ordinary courts nor by the state arbitration commissions that were responsible for settling disputes between the various state-owned enterprises (i.e. nationalised enterprise, cooperatives, etc.). The situation only changed towards the end of the 1980s. A second historically important event was Poland’s accession to the European Union on May 1, 2004. Irrespective of the important consequence of this fact in the short and long term, Poland’s membership of the EU represents an opportunity to complete the market economy developments of recent years while making use of the collection of legal instruments common to all the Member States of the European Community. This also concerns unfair competition law.

2. The Legislative Framework of Unfair Competition Law

In Polish legal theory, a traditional distinction is made between the law against unfair competition in the narrower sense and unfair competition law in the broader sense. Unfair competition law in the narrower sense comprises regulations in the Act on the Combating of Unfair Competition dated April 19, 1993, which replaced the 1926 Act. Unfair competition law in the broader sense also includes the legal provisions contained in a number of special regulations. The Polish Act on the Combating of

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1 56 Dziennik Ustaw (Official Gazette) Item 467 (1930).
Unfair Competition is structured according to the standard of German law, which was implemented in the countries of eastern and central Europe. Art. 3 (1) of the Act contains the actus reus of unfair competition (general clause). Art. 3 (2) then lists as examples the individual special actus reus. Art. 3 (1) lays down that unfair competitive activity is unlawful and dishonest if it endangers or infringes the interests of other entrepreneurs or customers. Art. 3 (2) lists as examples the following unfair competitive activities: misleading corporate designation, incorrect or fraudulent indication of the geographical origin of goods or services, misleading labelling of goods or services, infringement of business secrecy, inducement to breach of contract, slavish imitation, defamation or dishonest praise, impediment of market access, bribery of the holders of public offices, organisation of pyramid sales systems and the operation and management of business activities in the consortium system. These are accordingly identified as typical unfair competitive acts. The legislature qualified as unfair competitive acts these forms of undesirable market behaviour that occur most frequently in business practice. Of the said unfair competitive acts, the prohibition of unlawful and dishonest advertising (Art. 16 of the Act) is the most important in practice. The provision of Art. 3 of the Act allows the development of other (unspecified) forbidden competitive activities in judicial practice. As of today, case-law has developed the following forms of dishonest market behaviour: the use in the course of business of signs or symbols to which only entrepreneurs from specific professions are entitled, unauthorised use of another’s radio concepts, advertising for goods that are not available at all or only in insufficient quantities.

Competition law in the broader sense includes provisions for specific fields of business. The most important are the Act on Education without Alcohol and the Combating of Alcohol Addiction dated October 26, 1982, the Press Act dated January 26, 1984, the Act on Games of Chance and Competitions dated July 29, 1992, the Broadcasting Act dated December 29, 1992, the Act on Protection against the Consequences of the Consumption of Tobacco and Tobacco Products dated November 9, 1995, the Act on the Public Trading in Securities dated August 21, 1997, the Pharmaceuticals Act dated September 6,