

# Unfair competition practices under Turkish law

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IN TODAY'S free market economy, competition may increase in particular sectors and times, resulting in unfair competition practices against applicable laws and good faith. In general, "unfair competition" occurs when a competitor acts against good faith in the free market. Under Turkish law, unfair competition is governed by the Turkish Commercial Code. One of the most common types of unfair competition practices is "discrediting". Discrediting is simply defined as taking advantage of discrediting the competitors and damaging their reputation. Misleading, deceptive or offensive information given to the competitors' customers or clients constitutes a discrediting act.

As certain discrediting acts might fall within the scope of the freedom of speech and freedom of press, it is worth analyzing which discrediting acts or advertisements would be considered as unfair competition practices under Turkish law. The criterion should be evaluated in light of the Supreme Court's precedents. For instance, the Supreme Court has resolved that the advertisement alleging that the company's cell phone tariffs are cheaper than its competitor's tariffs constitutes a discrediting act as the compared tariffs do not cover the same services, and with such deceptive information, the customers and clients are misled.

Another type of unfair competition

that is commonly seen in the market is "the breach of business conditions". Various entities may not opt to act in line with the applicable legislation, to gain advantage. This may create an unfair advantage for these entities in the market, compared to the others acting in compliance with their obligations. Under Turkish law, the term "acting in compliance with the business conditions" is interpreted quite broadly and covers all regulations and obligations applicable to the competitors. For instance, failure to obtain the required licenses or permits for the activities that require a certain license or permit is one of the most common examples for the breach of business conditions.

"Inducing the breach of contract" is another type of unfair competition which is often seen in practice. The entities and customers are free to execute a contract with any terms and conditions agreed by the parties, subject to the applicable legislation. On the other hand, businesses must compete with each other in good faith. As these two basic law principles may contradict in several cases, it is crucial to balance these principles, by examining each case based on its own merits. In addition, for the occurrence of unfair competition, the Supreme Court seeks additional conditions that may adversely affect one's free will to execute a contract and deliberately damage

other competitors' interests. Accordingly, inducing another company's customers/clients to breach/terminate their existing contracts to execute a new contract with the inducing party is one of the most frequently encountered examples of "inducing the breach of contract" under Turkish law.

In today's digital era, any discrediting act and misleading information on businesses may be exaggerated and adversely affect the free market competition as a whole. As it now becomes more difficult to reach true and accurate information on businesses and services without deceptive trade tricks in the market, ensuring the fair competition in the free market is getting harder every day.

One of the main tools deterring the unfair competition is the competitors' right to file a lawsuit before the competent court for these acts' determination, correction or suspension along with the compensation of its damages. However, this remedy may not provide immediate relief in certain cases as the litigation may take a long time. Therefore, the competitors need more rapid solutions to alleviate their damages/losses due to their competitors' unfair competition practices. In particular, for developing countries such as Turkey, it is crucial to provide competitors with fair trade conditions in the free market and ensure the fair competition by duly applying the unfair competition provisions.

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