Unfair Competition in the Realm of E-Commerce

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Abstract

Unfair competition in the realm of e-commerce is a subject critically examined in this article. In today's world, the development of contractual agreements wherein one party holds a superior and dominant position over the other grants the advantaged party the ability to incorporate terms in the contract that may be deemed unfair and inequitable to the opposing party. This issue has prompted legislators in various countries, as well as in transnational legal instruments, to enact and enforce stringent regulations aimed at countering such unfair contractual terms. The phenomenon of unfair competition has also manifested itself in the digital sphere of e-commerce. Given that a significant number of transactions and exchanges take place within this domain, it is necessary to establish legal provisions to protect individuals who suffer harm due to unfair competition. The research method adopted in this article is descriptive-analytical, utilizing library resources for data collection and compilation.

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1. Introduction

A relatively new form of service in the realm of e-commerce, referred to in modern legal literature as brokerage, agency, stock banking, and purely executive trade, has recently given rise to notable legal considerations. Brokerage in e-commerce traditionally involves executing customer requests received via telephone, fax, or electronic tools such as portals and the internet, with all advisory and service-providing aspects being entirely excluded. This type of service primarily appeals to customers who wish to implement their own strategies and have no interest in receiving information or consultation from service providers. Contracts between brokers and their counterparts usually include a clause stating that no claims for damages shall arise due to the absence of consultation. This feature aligns such services with traditional purely executive services, such as customer-initiated orders, making these types of investment services solely based on executive relationships between service providers and investors. Consequently, many believe that, just like traditional markets, competition law exists in e-commerce, with only the governing environment having changed. This article seeks to answer the question of how competition law in e-commerce can align with standards of fairness and justice.

2. Unfair Competition

In most countries, ensuring the effective protection of the rights of interested parties against unfair competition is only possible through legislation. Several revision conferences have stipulated that if the legal systems of member states, including both common law and statutory law, are sufficiently effective in combating unfair competition, there is no obligation for those states to enact new laws on the matter.

Furthermore, paragraphs 2 and 3 of Article 10bis of the Paris Convention define acts that constitute unfair competition and provide specific examples of such acts that must be prohibited (Taubman et al., 2020). The wording of these provisions is such that they are binding and enforceable in the countries that have adopted them, and they must be directly implemented by judicial and administrative authorities in the country requesting action against unfair competition. Additional considerations regarding these provisions are outlined below.

Different member states of the union have varying definitions of unfair competition. In some countries, certain laws are explicitly classified as anti-unfair competition laws, whereas in others, they are not, or specific conditions apply. To effectively combat unfair competition, each country independently determines which practices fall within this category. However, these determinations must be consistent with paragraphs 2 and 3 of Article 10bis. According to these provisions, any act that contradicts fair and honest commercial and industrial practices is considered unfair competition. The definition of competition varies from country to country and is shaped by prevailing national concepts. It is possible that the concept of unfair competition may apply to actions within a specific industry or trade sector that do not appear unjust on the surface but cause harm by unjustifiably exploiting a reputation acquired in another domain.

Any act is considered unfair competition if it contravenes fair and honest practices in industry and commerce (Kang, 2024). This standard is not limited to the requirements and provisions of the country requesting action against unfair competition. Consequently, the administrative and judicial authorities of that country may act in accordance with international unfair competition regulations. If the judicial authorities of a country that has initiated legal proceedings against unfair competition determine that an act is inconsistent with honest and fair practices in industry and commerce, they are obligated to declare it as an instance of unfair competition and apply national legal remedies and penalties accordingly. A broad range of practices may be classified as unfair competition under this standard.

3. Examples of Unfair Competition

Paragraph 3 of Article 10bis of the Paris Convention provides specific examples of acts that are definitively considered unfair competition and must be prohibited. This provision is recognized by all member states of the union. In such cases, either the provision is incorporated into domestic laws and implemented through national legislation, or it is directly enforced by judicial and administrative authorities. Listing these examples does not serve to limit the scope of unfair competition, as the mentioned cases represent only the minimum threshold (Senftleben, 2024).

The first example of an act constituting unfair competition involves deceptive practices that create confusion regarding competitors through the misuse of institutions, goods, or commercial and industrial activities. The unauthorized use of identical or similar trademarks and trade names is explicitly prohibited by law. Even in the absence of specific legal provisions, any use of such elements that leads to confusion and deception should be prohibited as an instance of unfair competition. This principle also applies to other methods that cause deception or confusion, including similar packaging, misleading advertising, and any product-related representations. It is irrelevant whether such actions were carried out with good intent; what matters is that they are unlawful. However, good intent may mitigate the severity of legal penalties.

The second example of an act constituting unfair competition involves false claims about a competitor’s institution, goods, or industrial and commercial activities. Simply discrediting a competitor by making false statements that harm their trade, goods, or services is sufficient grounds for enforcement, even in the absence of an intention to cause harm. Determining whether statements that are not entirely false but potentially exaggerated should be classified as unfair competition is a matter for each country's judicial system (Reibold & Firth, 2022).

The third example of unfair competition involves "misleading statements." Unlike the previous example, which focused on false claims about competitors' goods, misleading statements pertain to the goods of the person making the statement. This

provision applies to any statements or representations in commerce that mislead the public regarding the nature, method of production, distinguishing characteristics, usability, or quantity of a product. However, it does not apply to false statements concerning the origin of goods, the identity of the producer, the manufacturing institution, or related commercial and industrial activities. Since such matters have not yet been explicitly addressed in Article 10bis of the Paris Convention, national statutory or customary laws determine whether they violate fair and honest commercial practices and thus constitute unfair competition.

4. Cyberspace

The primary obstacle in studying issues related to cyberspace is the absence of a fixed definition for these phenomena, a challenge that even legislative bodies struggle with. The term itself has no specific reference in legal discourse, despite its frequent use in political discussions, legal justice, media, academia, and society at large (Ivanova et al., 2022). Rather than interpreting cyberspace law as an abstract phenomenon, it may be more appropriate to consider it as a spectrum of illegal activities that share a common characteristic—their occurrence within the framework of information networks and communication technologies. Thomas and Loader incorporated this perspective into their definition of cyberspace law, defining it as illegal and wrongful computer-based activities (in certain jurisdictions) carried out through global electronic networks (Salimi, 2014).

One common approach to categorizing cyberspace law is to examine the relationship between law and technology. Within this framework, a distinction can be made between "law facilitated by computers" and "law focused on computers." The first category includes legal matters that predate the advent of the internet but have taken new forms within cyberspace. The second category consists of legal issues that are a direct result of the internet and would not exist without it. Crimes such as virus attacks and website hacking fall into this category. While this general classification is useful, it has certain limitations from a legal perspective, as it relies more on technology than on the relationships between individuals within society.

Another method of classifying cyberspace law is based on its purpose. Accordingly, Wall categorizes cyberspace law into three legal divisions:

• **Cyberspace trespass**, which refers to intruding upon or causing harm to individuals' assets (e.g., spreading viruses and hacking websites).

• **Virtual crimes**, which involve the theft of money and assets (e.g., credit card fraud, violations of intellectual property laws, and plagiarism).

• **Virtual violence**, which entails causing psychological or physical harm to others (e.g., hate speech and harassment).

In this system, the first two categories pertain to crimes against property, whereas the third category involves offenses against morality (Dunn et al., 2024).

A significant portion of the discussion surrounding cyberspace law, in light of Wall's classification, pertains to "new" issues in the field. One of the key questions in this debate is whether cyberspace has created new structures and frameworks for social interaction that have altered the ways individuals engage with one another. Constraints such as time and place, which traditionally limited real-world interactions, have been eliminated by the internet, enabling nearly instantaneous communication between physically distant individuals. This transformation makes people more vulnerable to potential offenders who can access them immediately without physical distance acting as a barrier. At the same time, the internet amplifies the scope of affected individuals. Cyberspace enables an average person with relatively low technological proficiency to simultaneously communicate with, interact with, and influence thousands of people. Furthermore, the internet allows individuals to easily conceal their identities and commit acts anonymously. This capability presents a major challenge for institutions responsible for tracking offenders.

5. E-Commerce

Commercial service brokers must, to the extent reasonably necessary for service provision, obtain information about their clients' financial status, experience with financial instruments, and investment objectives. This information must be collected in written or electronic form. The obligation to create a client profile applies in all cases where a non-professional client,

unfamiliar with competition law mechanisms, intends to engage in financial transactions. However, the quality of information included in the client profile varies depending on the type of financial service. In purely executive relationships, where the client independently initiates an order, the broker is only required to establish a simple profile containing information about the client's investment knowledge, financial status, and investment objectives. Clients are typically asked to complete a questionnaire to provide the relevant information to the broker, who then assigns them to a transaction group based on their responses.

Additionally, brokers are not only obligated to create a client profile but must also assess whether the transactions the client wishes to engage in align with their profile. Part of this alignment pertains to compliance with competition law principles. Only under such conditions is the creation of a client profile deemed reasonable and logical. This requirement applies even in purely executive relationships, meaning that if a client submits an order through computer-based systems, the system must be capable of verifying whether the requested transactions are consistent with the client profile. However, brokers are not required to assess whether a given order complies with competition laws but must verify compliance with the relevant standards. If, in purely executive transactions, a broker executes a client's order without first reviewing their profile and considering competition law principles, the client may be held partially liable for any resulting financial losses.

A crucial question arises: if a client insists, is an investment service broker allowed to execute an order that does not conform to the client's profile? According to the common law precedents established by the Netherlands Securities Institute's Complaints Board, such transactions may be permissible, provided that the investor is aware that the transactions do not align with their profile and understands the associated risks, including competition law regulations. In a case involving the financing of options contracts with pension funds, the board ruled that as long as e-commerce competition law requirements were met, the broker was not obliged to refuse the client's orders, provided the client had been informed of the risks associated with options contracts and explicitly acknowledged that they "knew what they were doing." Therefore, it appears that the investor bears responsibility for executing transactions that do not match their profile (Moazeni, 2014).

In most cases involving severe financial risks, even if a client insists and other requirements are met, they should not be allowed to enter into a contract. This applies, for example, when a recently dismissed employee wishes to invest their savings in highly risky securities that do not comply with competition law principles, despite needing those funds in the coming years. Another scenario occurs when a client with minimal assets and very low income seeks to invest in options contracts. In such cases, brokers are expected to force clients to close their accounts if adverse market conditions arise, ensuring compliance with margin requirements. In these situations, a client's willingness to engage in highly risky transactions in violation of competition law itself serves as evidence that they do not adequately understand the associated risks.

Weller strongly criticizes this approach, arguing that in common law courts and complaints boards, insufficient attention has been paid to the fact that it imposes an unacceptable restriction on private autonomy and undermines the principle of individual investor responsibility. From Weller's perspective, in purely executive relationships, if an investor wishes to enter into a contract that contradicts e-commerce competition law and does not match their profile, but they are nonetheless capable of fulfilling the contractual obligations, it suffices for the broker to inform them of the risks associated with such a contract.

6. Challenges of Competition Law Violations in Cyberspace

One of the fundamental challenges in understanding cyberspace law violations is the lack of precise data on their occurrence. While the accuracy of information regarding real-world offenses has always been a subject of debate, the issue becomes significantly more complex when assessing cyberspace law violations (Ksenia et al., 2022). Several factors contribute to this challenge.

First, the concealed and private nature of the internet means that certain actions, including commercial and competitive practices, often go undetected, and a lack of legal awareness may prevent victims from realizing that certain practices are illegal. Second, the underestimation of cyberspace law and the allocation of limited resources to its enforcement by the legal justice system may lead to underreporting due to anonymity or inaccessibility. Third, the global nature of cyberspace law results in victims and offenders residing in different countries, where varying legal frameworks complicate and delay police intervention.

This situation may lead to the neglect of many cyberspace-related issues that would otherwise be addressed in the physical world. Additionally, some forms of online misconduct, such as violations of competition law, have become so widespread that they are largely overlooked by the legal justice system. Considering all these challenges in measuring online offenses, it is evident that internet-related activities have become extensive and costly. Newman and Clarke estimated that in 2024 alone, competition law violations cost global trade approximately $1.6 trillion. According to UK government estimates, the same offense inflicts an annual loss of £10 billion on the country's economy (Mahmoudi, 2014).

The distinctive characteristics of cyberspace offenses pose serious challenges to the justice system and legal scholars. Several issues affecting regulatory authorities and enforcement agencies have already been discussed, including the physical distance between individuals, differing legal regimes across jurisdictions, and the limited resources allocated to tackling competition law violations in cyberspace. Another critical challenge is the lack of experience and expertise among judicial bodies, which may prevent them from responding effectively, even when they are aware of legal breaches.

Competition law violations in cyberspace present unique challenges for legal scholars. Specifically, many legal theories—explicitly or implicitly—assume that such violations occur in locations with specific social, cultural, and material characteristics that predispose them to unlawful behavior. Theories on routine activities and crime prevention suggest that justice system efforts to regulate unlawful behavior should focus on the specific attributes of each location. However, in cyberspace, categorizing environments as "more" or "less" susceptible to competition law violations is difficult, as geographical distances in the online world are effectively nonexistent.

A review of official statistics reveals that most competition law violations are committed by individuals belonging to higher socioeconomic classes with advanced skills. Engaging in competition law violations in cyberspace requires a minimum level of technological literacy and access to resources for purchasing, installing, and maintaining a functioning computer. Since marginalized and lower-income individuals generally have limited access to these technologies and skills, legal scholars may need to reevaluate the impact of concepts such as deprivation and exclusion on individual behavior (Ghafari, 2004).

7. Protection Against Unfair Competition

Protection against unfair competition has been recognized for over a century as part of industrial property protection. This recognition was first formalized in 1900 during the Brussels Diplomatic Conference for the Revision of the Paris Convention for the Protection of Industrial Property (hereinafter referred to as the Paris Convention), with the inclusion of Article 10. As a result of subsequent revisions in later conferences, this provision now exists in its present form in the Stockholm (1967) revision of the Paris Convention:

"(1) The countries of the Union are obligated to ensure effective protection for the nationals of these countries against unfair competition."

Any competition contrary to fair practices in industrial or commercial matters shall be considered unfair competition.

The following acts, in particular, shall be prohibited:

- Any act intended to create confusion concerning a competitor's establishment, goods, or commercial and industrial activities.
- False allegations made in the course of trade with the intent to discredit a competitor's establishment, goods, or commercial or industrial activities.
- Indications or claims whose use in the course of trade is likely to mislead the public regarding the nature, method of manufacture, characteristics, suitability for purpose, or quality of the goods.

At first glance, there may appear to be fundamental differences between the protection of industrial property rights—such as patents, registered industrial designs, and registered trademarks—and protection against unfair competition. Industrial property rights are granted by intellectual property offices upon request and confer exclusive rights over the subject matter. In contrast, protection against unfair competition does not rely on the granting of specific rights but is instead based on the principle (whether explicitly stated in statutory provisions or recognized as a general principle of law) that acts contrary to fair commercial practices must be prohibited.

However, the connection between these two types of protection becomes evident when specific cases of unfair competition are examined. For example, in many countries, unauthorized use of an unregistered trademark is considered unlawful under general principles governing protection against unfair competition (in some jurisdictions, such unauthorized use is referred to as "passing off"). Another example is in the field of inventions: if an invention has not been publicly disclosed and is considered a trade secret, certain unauthorized actions by third parties concerning that trade secret may be deemed illegal. In fact, even in cases where an invention has been disclosed to the public and is either unpatented or has an expired patent, some actions related to it may still be deemed unlawful under specific circumstances (Dunn et al., 2024).

The above examples illustrate how protection against unfair competition serves as an effective complement to industrial property rights, such as patents and trademarks, in situations where an invention or trademark is not covered by formal intellectual property rights. However, there are other instances of unfair competition that do not function as a supplementary mechanism—for instance, the scenario outlined in the second clause of the third section of Article 10bis of the Paris Convention, which pertains to false allegations made in trade to discredit a competitor. In such cases, protection against unfair competition does not merely serve as an ancillary measure, as the scope of unfair competition law extends beyond supplementing industrial property rights.

Several countries, both in developed and developing regions, have adopted or are in the process of adopting market-based economic systems that allow competition among industrial and commercial enterprises within legally defined boundaries. Free competition among businesses is regarded as the most effective means of balancing supply and demand while benefiting consumers and the economy at large. However, where competition exists, the potential for unfair competition practices also arises. This phenomenon has been observed in all countries and throughout history, regardless of prevailing political or social systems (Samavati, 2011).

Economic competition is sometimes compared to sports competition, as both involve the notion that the best should prevail. In economic competition, the ideal outcome is that the company offering the most efficient and beneficial products or services under the most economically favorable and consumer-friendly conditions should succeed. However, this result is only achieved if all participants adhere to a common set of fundamental principles. Violations of these principles can take various forms, ranging from technically unlawful but harmless acts (which even the most ethical and cautious entrepreneur might commit) to intentional misconduct aimed at harming competitors or deceiving consumers.

Experience has shown that unregulated market forces alone cannot guarantee fairness in competition. In theory, consumers, as the referees of the economic game, could deter fraudulent entrepreneurs by discrediting their products or services and favoring those of honest competitors. However, reality is different. As economic systems grow more complex, consumers are less able to act as referees. Often, they are not even in a position to recognize unfair competition practices, let alone respond to them. In fact, consumers, alongside honest competitors, must be protected against unfair competition.

It has been demonstrated that self-regulation alone does not provide sufficient safeguards against unfair competition. If well-developed and properly monitored, self-regulation can be faster, more cost-effective, and more efficient than any judicial system. However, to effectively prevent unfair competition, self-regulation must be complemented, at least in certain areas, by an enforceable legal framework.

8. Unfair Competition in Cyberspace

Digital technology is advancing at an accelerated pace, reflecting high levels of innovation that continuously lead to the emergence of new forms and models of services and products. In the era of the internet, due to the characteristics of digitalization and virtualization, unfair competitive behavior takes on a new form in cyberspace, distinct from its past manifestations. Because the marginal cost of digital goods is low, their replication and distribution at large scales is inexpensive. The strong network effect of the internet means that as the number of users increases, the value of digital goods and services also rises. While these characteristics create a conducive environment for the rapid growth of the digital economy, they also foster an environment ripe for unfair competition in the digital sector.

As the name suggests, unfair competition on the internet refers to the behavior of companies that leverage digital technology and online platform features to gain competitive advantages through illegal or unethical means in the online environment, thereby undermining fair competition in the market. Such behavior not only harms competitors but also

misleads consumers and disrupts market order. Unfair competition in cyberspace encompasses any unfair commercial activity conducted through digital platforms such as social media, the internet, international trade platforms, advertising programs, and other commercial events. These practices, as instances of modern unfair trade practices, directly or indirectly harm or violate the legitimate rights of trademarks or damage their reputation (Dunn et al., 2024).

Unfair competition in cyberspace can generally be categorized into two main types: data monopoly and abuse, and false advertising and consumer deception.

8.1. Data Monopoly and Abuse

In the digital economy, data is considered a new factor of production and is crucial for corporate competitiveness. Some companies unlawfully collect and use user data, monopolizing such information to restrict market entry and expansion for competitors. For example, personal data and consumer habits can be obtained through improper means and subsequently used to offer personalized services and targeted advertisements, creating a competitive advantage that is not accessible to all market players (Xu, 2022).

8.2. False Advertising and Online Consumer Deception

Unfair competitive behaviors in cyberspace not only restrict market development but also violate the legal rights and interests of consumers and market operators, ultimately undermining the sustainable functioning of a market economy. Unfair competitive behaviors in cyberspace manifest within internet networks, and the key components defining such behaviors include:

Network Operators: While the online environment differs from physical markets, "network operators" broadly encompass all organizations and personnel engaged in profit-seeking operational activities within the digital network.

Consumers and Competitors: Consumers, their legal rights, and market order are all adversely affected by unfair competition. In cyberspace, illegal operators employ unfair competitive behaviors through informal mechanisms to infringe upon the rights and legal interests of others (consumers and competitors) while securing undue benefits. These practices also impact the general market for related goods and services.

Violation of Free Will and Commercial Ethics: Unfair competition in cyberspace should be categorized as inherently unlawful conduct and unfair competitive behavior. Therefore, in determining whether a behavior constitutes unfair competition, it is necessary to assess whether it contradicts established standards concerning the violation of free will and commercial ethics.

9. Forms of Unfair Competition in Cyberspace

9.1. Creating Consumer Confusion

Some operators attempt to sell their goods and services by using trademarks or information associated with well-known brands. This practice not only results in consumers purchasing low-quality goods and services but also damages the reputation and popularity of the original brands.

9.2. Misleading Advertising

This practice, sometimes referred to as "cumulative advertising," involves an operator misleading consumers through false advertisements, outdated information, or partial disclosures. A common technique is presenting a part of a product as though it represents the entire offering.

9.3. Disclosure of Trade Secrets

As network information technology rapidly evolves, corporate trade secrets transmitted through digital networks are increasingly at risk of theft and exposure. In addition, commercial bribery, coercive transactions, and other similar practices

that involve threats of disclosure of confidential information are also prevalent (Meng, 2015). E-commerce platforms often impose specific regulations and restrictions, leveraging their relative advantage in trade to require merchants on the platform to use only certain proprietary technical tools for transactions and accept specific limitations. Concealment and coercion are characteristic behaviors of such trade platforms (Xu, 2022).

10. Conclusion

Online platforms provide extensive advertising opportunities for businesses; however, they also facilitate false advertising and misleading practices. Some companies manipulate online platforms to spread false information, exaggerate the performance and effectiveness of their products or services, and mislead consumers, ultimately harming the reputation and financial interests of other businesses. Such behaviors not only deceive buyers but also weaken fair market competition. This issue, due to its relatively recent emergence, has not yet been adequately addressed in the legal frameworks of many countries.

This article has examined instances of unfair competition in the field of e-commerce. In conclusion, although the nature of the unfair practices in cyberspace mirrors those occurring in physical markets, distinct legislative, judicial, and enforcement policies must be formulated to address them. Ultimately, it is recommended that countries adopt specific and even harmonized supranational regulations in this field and mandate compliance with these legal frameworks.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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