

## Unfair Competition – How To Deal With It?

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Amid today's economic downturn concerns, competitive rivalry on the market is undoubtedly gaining momentum. The majority of entities compete on merits, though there are situations where current market situation may give rise to a number of problems previously either unknown or put aside by many entrepreneurs.

Some businesses may resort to unfair methods geared to take advantage of rival-generated resources. The typical objective of such actions is to cut in where other entities already are by the sweat of their brow.

There are several types of behaviour that may constitute an act of unfair competition, subject to potential legal action – parasitic competition, use of another's confidential information, and unfair soliciting of another's employees, to name a few.

One of the most common forms of unfair competition – and a very annoying one – is parasitic competition.

- A former distributor of a renowned brand markets a product whose name and appearance are misleadingly similar to that which it previously sold as distributor (while the product features are not subject to exclusive protective rights)
- A publishing house issues a periodical which strongly resembles (but is not identical to) the external features, layout, colour theme, idea, etc. of a rival's publication
- A business unlawfully uses a manufacturer number, issued to a renowned producer by a certification organisation, to mark a series of its own products

This is nothing short of the time-tested doctrine and practice of parasitic competition (which is also referred to, as the German writers have poetically put it, "plowing with another's ox"). Where intellectual property laws, in the broad sense of the term, fail, and where dishonesty and cutting corners are evident, a good solution is to apply the safeguards set out in the Unfair Competition Act.

Possibilities abound – the injured party may seek damages in court if it has suffered a measurable financial loss. It may also request that the rival cease and desist its objectionable conduct and rectify the adverse effects for the injured party's operations. Sometimes, in image and renown terms, it is enough for the culprit to issue a press or online apology.

To expedite the safeguards, the injured entrepreneur may seek a court injunction to secure the claim even before suing. Moreover, seeing as unfair competition matters fall into the intellectual property matters category, the injured party can make the most of the evidence securing measures available in this special type of procedure.

Furthermore, in a relatively new development, Polish courts have specialised departments handling such kinds of matters in a more competent and expeditious fashion (which seems to work in practice). This offers the chance for a quick resolution of the problem, provided it is properly identified and properly presented to the court.

We not only advise on how to identify such unfair conduct on the part of the competition, but also how to avoid any conduct posing a risk of poaching another's renown, while in the event of a court dispute – how to defend the adverse party's allegations.

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