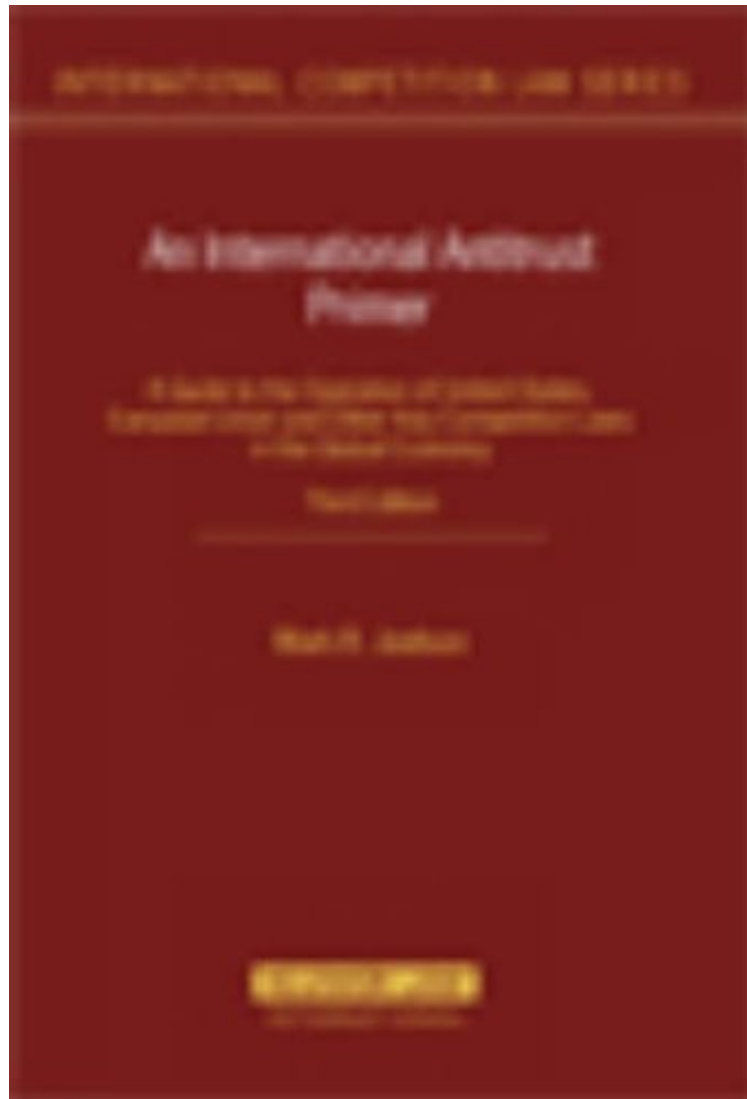


(Mobile ebook) Unfair Competition Law. EUropean Union and Member States (International Competition Law Series Set)

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Frauke Henning-Bodewig

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Frauke Henning-Bodewig : Unfair Competition Law. EUropean Union and Member States (International Competition Law Series Set) before purchasing it in order to gage whether or not it would be worth my time, and all praised Unfair Competition Law. EUropean Union and Member States (International Competition Law Series Set):

0 of 0 people found the following review helpful. Fairness in the marketplace By P. Nagy The author also provides a selected bibliography of sources for each country. It would be difficult to find a more useful descriptive analysis of European Unfair Competition Law than this systematic study. It is practical, thorough, clarifying, and readable, all at the same time. The author untangles the most complex of apparent, contradictions with impressive skill. Copies of this book will quickly take their places on the working shelves of interested practitioners, academics, and officials throughout Europe. Excerpt: The title 'Unfair competition law--European Union and Member States' raises two questions, namely: is there indeed an 'Unfair Competition Law'? And if so, how 'European' is this? The first question can be answered in the affirmative. Despite all their differences, all European countries have developed mechanisms based on the principle of fairness to control commercial activities. The fact that details are disputed--see the first chapter--does not affect the basic common conviction that market conduct should be fair in the interests of all market participants and that there must be some rules to secure this fairness. One may disagree whether this should be referred to as unfair competition, unfair trade practices or unfair commercial practices. Each of these terms has its advantages and disadvantages. The use of the term unfair competition here is based above all on the fact that it has long been the expression used at international and (although not consistently) European level. In addition, most Member States speak of unlauterer Wettbewerb, concurrence dloyale, ongeoorloofde mededinging, competenzaia desleale, concorrenza sleale etc. While this does not ignore the fact that the concept of unfair competition law as such has not entered the Anglo-American legal systems, it nevertheless seems to be the most familiar concept in Europe. In any event, the question of terminology should not be overrated, there being no significant differences in terms of content between 'unfair competition' and other terms, such as the term frequently used by the ECJ, 'the fairness of commercial transactions' or the term 'unfair commercial practices' used in Directive 2005/29/EC. What lies behind the term 'unfair competition'? On this, there are different views (for detail see Chapter 1, I). and at this point we merely point out that it would be unhelpful to define the field of regulations at issue too narrowly solely for terminological reasons. What is regulated in one country under the law of torts is part of consumer protection law in another Member State; what one Member State leaves to the self-regulatory mechanisms is in another country a matter for the state prosecutor. This cannot be the decisive factor. What matters is that the fairness of market conduct is at issue--and it is initially irrelevant where and with what instruments this is to be achieved. This brings us to the second question: Is there a European unfair competition law? Definitely not, in the sense of one uniform coherent set of regulations, which for a wide variety of reasons has not yet been achieved at Community level. What does exist, however, are selective regulations, regulations dealing with individual problem areas in the field of unfair competition. They have made considerable progress recently, especially through the Directive on Unfair Commercial Practices that was passed in 2005. Thus, although the 'piecemeal approach' has predominated so far, there are a number of arguments that may justify the term 'European' unfair competition law. Within the framework set by Community law, unfair competition law, however, is above all a matter for national law. National law is of importance even in situations where Community law has led to provisions that are identical in terms of language, for instance where Member States have adopted the text of a directive more or less unchanged (such as that on comparative advertising). The Community legislature necessarily uses unspecific legal terms that must be given specific meaning by the Member States. The question of what, for instance, is disparaging, misleading or harassing depends very much on the legal tradition, on cultural, linguistic and historic particularities, indeed on differences in mentality. It would be naive to assume that the harmonisation of the legal framework necessarily leads to a completely uniform interpretation and application in all 25 Member States. As long as there are different national states and above all different cultural communities, there will be differences that European unfair competition law and even the harmonising judicial practice of the ECJ will be unable to eliminate. On the contrary, one might ask whether these differences should be eliminated at all, as long as, in the final analysis, the desired protection of competitors and consumers is achieved and the free movement of goods and services is not restricted. Hence, anyone dealing with fairness of market conduct in Europe would be well advised to consider both the provisions at Community level--including the judicial practice of the ECJ on the fundamental freedoms--and the very lively national competition laws that, while respecting Community law, have nevertheless retained their own special features. Misunderstandings will arise above all if the focus is on the one at the expense of the other. Thus anyone who only considers, for instance, the situation at European level will be surprised to discover that an 'unfair competition case' is in practice handled quite differently in, for instance, Sweden, Poland, Great Britain or France. And anyone who only considers Swedish, Polish, British or French unfair competition law will fail to realise that these laws today are at least partly based on European directives and principles and consequently can and must be interpreted in accordance with Community law. Thus it is only the two combined, the European requirements and national laws, that create "European unfair competition law". Accordingly, the following intends to bring the two levels together. This means that, following a number of basic considerations (Chapter 1), a brief description will be presented of the international requirements, which take priority over European and national law (Chapter 2). The next chapter then deals in more detail with Community law (Chapter 3), followed by an extensive discussion of the national unfair competition laws of all 25 Member States (Chapter 4).

The book delineates, with extraordinary clarity and precision, the working of unfair competition law throughout the European Union. Its four comprehensive chapters encompass: basic considerations of definition, subject matter, enforcement, and applicable law: international provisions under the Paris convention, TRIPS, and WIPO model law; analysis of relevant EC directives and regulations and ECJ jurisprudence; and extensive discussions of the national unfair competition laws of all 25 Member States. For each Member State, specific topics covered include such considerations as the following: sources of law; competition law in a nutshell; regulation of advertising; direct marketing; sales promotion; risk of confusion; disparagement, defamation; misappropriation, imitation; impediment of competitors; and breach of the law. The author also provides a selected bibliography of sources for each country. It would be difficult to find a more useful analysis of European Unfair Competition Law than this systematic study. It is practical, thorough, clarifying, and readable, all at the same time. The author untangles the most complex of apparent contradictions with impressive skill. Copies of this book will quickly take their places on the working shelves of interested practitioners, academics, and officials throughout Europe.