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Nihil sub sole novum?

The first Hungarian law against unfair competition from today's perspective

On 6 December 1922, the National Assembly of Hungary passed a bill on unfair competition. The law was promulgated in May next year as Act V of 1923, and entered into force on 15 May 1924. We can see already from its title that its scope was very similar to that of today's competition law: to ensure that business be done in accordance with honest practices. If we take a look at the subsequent jurisdiction of the courts in unfair competition cases, we may add to this conclusion that the most characteristic unfair market behaviours were surprisingly similar to the "tricky" business practices today's competition and consumer protection laws are fighting against. This study aims to present why and how the first Hungarian unfair competition law was adopted, and what examples of unfair business practices were considered as most typical or dangerous, also expanding the focus to some similarities and differences with the competition law and practice of our time.

Keywords: Codification – commercial law – competition law – consumer protection – Hungarian legal history – law against unfair competition – misleading advertising

1. The road to the first Hungarian competition law

The Hungarian commercial law had always been connected to the developments of the Austrian and (later) German legislation. The first attempts for a wider ranging commercial law regulation already appeared in the second half of the 18th century, at the time of Maria Theresa and her sons, Joseph II and Leopold II.¹ However, neither these first drafts, nor the first Hungarian commercial laws (adopted at the Diet of 1839–40)² included any specific regulation about business fairness. At that time, business ethics was still considered as an

internal affair of the merchants: a rule that had to be respected, otherwise the society of the merchants would have boycotted the unfair market player. For several centuries, internal regulations of the merchants' communities and development of their own customary law seemed to provide a suitable protection against immoral business practices, and a governmental intervention was not yet on the agenda.

After the Austro-Hungarian Compromise of 1867, a uniform Commercial Code was adopted, namely Act XXXVII of 1875. The draft of this code was prepared by the eminent Hungarian commercial law scholar István

¹ For more details see: KÉPES, Codex Cambio-Mercantil 48–76.

² HORVÁTH, A kereskedelmi törvény; KÉPES, Private Law 54–55; ZLINSZKY, Private law 314–318.

Apáthy, following the German Commercial Code of 1861 (ADHGB) as a model.³ Consequently, the Code did not contain any competition law specific regulation, but it reinforced that “in commercial law matters not specified in this law, commercial customs are to be followed, and in lack thereof the rules of general private law shall be applied” (§ 1). The first explicit legal norms that can already be considered competition law related can be found in Act XVII of 1884 (the “Industry Act”).⁴ By virtue of § 58 of this law, “[n]o industrialist or trader may use attributes, trademarks or data in his company name, letters and advertisements that do not correspond to the actual business relationship or reality”. Furthermore, §§ 51–52 specified that “sell-outs are only allowed based on a permit issued by the industrial authority”, i.e., the minister of commerce.

These sections of the Industry Act, effective from 1 October 1884, together with the ethical norms of the commercial customs (and in contractual relationships also the general principle of “good moral” of private law) served as points of reference in lawsuits initiated by businessmen against their (allegedly) unfair competitors. In case of an unfair company name, misleadingly resembling the commercial name of an already known competitor, or in case of unfair commercial communications, the courts had the opportunity to rely in their judgments on the above-cited provisions of the Industry Act. In other cases they had no other option than to apply a customary law rule. This legal situation did not create any difficulty until 1909, when a surprising decision of the supreme court of Hungary (called Curia) was published. In this decision the Curia established that “claims deriving from unfair competition are not regulated in the laws,

therefore no other question may be taken in account than whether the competitor committed an unlawful act prohibited by an existing law and caused damage to the other party with it or not”.⁵ By this, the Curia seemed to restrict unfair competition related cases to the legal area of actions for damages, not willing to provide any other legal remedy.⁶

In order to understand the background of this decision, we should take a look at the development of competition law legislation in Germany and Austria, the countries with the most respected legal systems in the eyes of contemporary Hungarian lawyers. In May 1896, the German Imperial Law on the Fight against Unfair Competition was published, on which a detailed presentation was made by Árpád Szakolczai at a meeting of the Association of Hungarian Lawyers in 1899. At the session of the House of Representatives of the Hungarian Parliament on 9 March 1900, minister of commerce Sándor Hegedüs declared that “he” had already been working on a bill about the unfair competition.⁷ The draft law, of course not elaborated by the minister himself but by the eminent professor of commercial law Ferenc Nagy, was published some months later.⁸ This first Hungarian draft was strongly based on the German Reichsgesetz, not having a general clause on the requirement of fair business practice,⁹ focusing only on some specific market behaviours considered unfair and legally prohibited.

In 1907, the lower house of the Austrian Parliament passed a bill against unfair competition that already had a general prohibition of unfair business practices.¹⁰ In the meantime, the new minister of commerce Ferenc Kosuth informed the House of Representatives that the Hungarian law on unfair competition

³ BENKE, Private Law 4; VÉKÁS, Codification 59.

⁴ According to the definition of the subject matter of this law, industry meant any business activity (“any industry, including commerce”, see § 1).

⁵ Decision No. 4333/1908. IV. p. t. of the Curia.

⁶ KUNCZ, Tisztességtelen verseny I, 69; PÁZMÁNDI, Hirdetésre története 15.

⁷ Képviselőházi Napló [Journals of the House of Representatives] Vol. XXVII (1896) [Session No. 546 (9 March 1900)] 132.

⁸ [Unknown author], Törvényjavaslat a tisztességtelen verseny ellen 263.

⁹ For a short analysis of the significance of a general clause in competition laws see e.g. DARÁZS, Generálklauzula 18–21. See also KUNCZ, Tisztességtelen verseny II, 85–86.

¹⁰ KRUSÓCZKI, Magánjogi oltalom 90.

was also “under preparation”.¹¹ The draft itself was actually ready in April 1907, and was also published in the form of a booklet by the Hungarian Chamber of Commerce and Industry. This second draft was prepared by state secretary (later minister) of commerce Gusztáv Emich,¹² and was more advanced than the first draft, as the aim of the government was to present a bill to the Parliament as similar to Austrian law as possible, given that external trade was an affair of common interest between Austria and Hungary in the dualistic empire.¹³ Consequently, it also had a general clause, but its other parts had been improved as well compared to Ferenc Nagy’s first draft. In May 1908, Ferenc Kossuth proudly announced to the House of Representatives that the new draft law on unfair competition was ready.¹⁴

On 8 October 1907, the treaty between Austria and Hungary on the regulation of the affairs of common interest was renewed. Art. XVII of this new treaty (ratified in Hungary with Act XII of 1908) made clear that those citizens of one state who live or run an established business in the other state, shall enjoy “the same rights in all aspects as the own citizens of the latter” also concerning the “protection against unfair competition”. Such mutual protection was already an international law expectation as well, since both Austria and Hungary had previously joined the Union for the Protection of Industrial Property founded in 1883 in Paris. One of the most important tasks of the member states of the Union deriving from its statute amended in 1900 in Brussels was “to assure protection to each other against unfair competition”.¹⁵ The corresponding provision can be read in Art. 10/B of the revised treaty (ratified in Hungary with Act LII of 1908), and the same obligation was

reinforced on 2 June 1911 at the second revision of the Union treaty (ratified with Act VIII of 1913).

In order to understand the above-cited decision of the Curia made on 11 February 1909, we have to take all these legal developments into consideration. Thus, the Curia pointed out that, without a specific regulation, it was not in the position (or at least, was starting to hesitate) to provide legal protection against unfair competition. However, even if the second draft law had officially been declared as “ready” by the minister of commerce in 1908, due to the unfortunate turn of domestic and international (military) events, neither the cabinet, nor the parliament had the opportunity and political will to go forward with its adoption. The petitions of commercial associations (such as the letter of the Chamber of Commerce of Temesvár sent in 1910), as well as the transcript of the Austrian government to the Hungarian cabinet, all remained unsuccessful.¹⁶ Until the collapse of the Austro-Hungarian Empire in 1918, no law against unfair competition was adopted in Hungary.

In quite an unusual way, the peace treaty signed in the Trianon castle near Paris on 4 June 1920 also warned Hungary of the importance of this unfulfilled obligation. According to the first paragraph of Art. 210 thereof, “Hungary undertakes to adopt all the necessary legislative and administrative measures to protect goods the produce or manufacture of any one of the Allied and Associated Powers from all forms of unfair competition in commercial transactions”.¹⁷ A similar clause could be found in the peace treaty of Saint Germain as well, relating to Austria. In the given international atmosphere, the post-war government had no other option than to accelerate the legislative process, and in 1921

¹¹ Képviselőházi Napló [Journals of the House of Representatives] Vol. VI (1906) [Session No. 101 (31 January 1907)] 235.

¹² BECK, Tisztességtelen versenyről 343.

¹³ [Unknown author], Törvényjavaslat a tisztességtelen verseny 569.

¹⁴ Képviselőházi Napló [Journals of the House of Representatives] Vol. XVIII (1906) [Session No. 325 (16 May 1908)] 365.

¹⁵ OSTERTAG, International Unions 112.

¹⁶ KRUSÓCZKI, Magánjogi oltalom 92.

¹⁷ Source of the English text: <https://www.dipublico.org/100759/treaty-of-trianon-treaty-of-peace-between-the-allied-and-associated-powers-and-hungary/> (last access: 11/10/2023).

both the Austrian and Hungarian governments presented a bill to the corresponding parliaments. The Hungarian bill – overall the third draft law on unfair competition – was presented to the National Assembly¹⁸ at the end of 1921 by minister of commerce Lajos Hegyeshalmy.¹⁹

The competent committees presented their supporting reports to the bill in January 1922,²⁰ however, because of a heated dispute on the new electoral bill aiming to restrict the electoral rights in various aspects,²¹ the National Assembly elected in January 1920 was not in the position to deal with the matter of unfair competition until the expiry of its mandate at the end of February 1922. Finally, a new (second) National Assembly was elected between March and June 1922, and as soon as the new legislative body was thus established, already at its ninth session day, head of government Count Stephen Bethlen informed the representatives that “the bill on unfair competition was ready”.²² The bill, with the same text as it had already been under discussion at the committee sessions of the previous assembly but with a slightly modified explanatory memorandum, was officially presented to the legislators by the new minister of commerce Lajos Walko in July 1922.²³

In August 1922, the economic and judicial committees filed their joint report on the bill to the National Assembly.²⁴ The parliamentary debate started on 1 December²⁵ and ended

on 6 December, when the bill was adopted by the National Assembly.²⁶ Hungary’s de facto head of state after the dethronement of the Habsburg dynasty of 6 November 1921, Regent Nicholas Horthy approved the bill on 2 January 1923, and the final version of the law was published in the official legal journal a day later as Act V of 1923.²⁷ According to § 48 of the law, the authorisation to establish the date when the law enters into force was given to the minister of commerce. By virtue of the minister’s decree No. 67.500/1924. K. M., Act V of 1923 became effective on 15 May 1924.²⁸

2. The structure and main provisions of Act V of 1923

The first Hungarian competition law has a clearer and more logical structure than the first two drafts. The preparatory works had already started during the ministership of Gusztáv Emich (father of the second draft) who was holding the position of minister of commerce from March to July 1920. According to Ödön Kuncz, former professor of commercial law at the University of Kolozsvár (then already Cluj, Romania) who had moved to the remaining territory of Hungary and continued teaching in Budapest, Emich’s draft was “long-winded and confusing”.²⁹ Later, Emich was appointed as the ambassador of Hungary in Berlin, and the task of preparing

¹⁸ The second chamber had not been reinstated yet, the unicameral “National Assembly” was basically equal to the House of Representatives, however elected on the basis of a much wider suffrage. See KÉPES, World War 216.

¹⁹ Nemzetgyűlési Napló [Journals of the National Assembly] Vol. XIV (1920) [Session No. 276 (23 December 1921)] 133.; for the official text of the bill and the explanatory memorandum thereto see Nemzetgyűlési Irományok [Documents of the National Assembly] Vol. XII (1920) 209–241 [Document No. 395].

²⁰ Nemzetgyűlési Napló Vol. XIV (1920) [Session No. 284 (9 January 1922)] 419.

²¹ KÉPES, World War 217.

²² Nemzetgyűlési Napló Vol. I (1922) [Session No. 9 (30 June 1922)] 136.

²³ Nemzetgyűlési Napló Vol. II (1922) [Session No. 27 (21 July 1922)] 250; for the official text of the bill with the relating explanatory memorandum see Nemzetgyűlési Irományok Vol. I (1922) 204–237 [Document No. 21].

²⁴ Nemzetgyűlési Napló Vol. III (1922) [Session No. 37 (16 August 1922)] 308–309.

²⁵ Nemzetgyűlési Napló Vol. VI (1922) [Session No. 64 (1 December 1922)] 91.

²⁶ Nemzetgyűlési Napló Vol. VI (1922) [Session No. 66 (6 December 1922)] 145.

²⁷ Budapesti Közlöny (1923:1) 5–7.

²⁸ Decree No. 67.500/1924. K. M. of the Minister of Commerce, in: Magyarországi Rendeletek Tára 58 (1924) 769–774, 769.

²⁹ NYIKES, Vissza a gyökerekhez 8. See also in Kuncz’s autobiography: KUNCZ, Életem 394.

of the bill was taken over by Kuncz himself in co-operation with Elemér Balás P., head of the legislative department at the Ministry of Justice. The final version, presented to the National Assembly in December 1921, and again (to the newly elected legislative body) in July 1922, can thus be considered as a joint work of Kuncz and Balás P.³⁰

The text of the law is divided into four chapters. The first one consisted of one section only: the general clause in the first paragraph (“Business competition must not be conducted in a manner that is contrary to the requirements of business fairness or good morals in general”),³¹ a summary of the legal consequences in the second one (requesting a prohibitory injunction to be ordered by the court and, in case of an intentional or negligent breach of law, claiming also compensation of damages);³² and a brief reference in the third paragraph to the criminal liability to be regulated in Chapter III. Chapter II contained the five *sui generis* cases, i.e., the explicitly prohibited unfair market practices in five titles. Chapter III dealt with the criminal consequences of breaches of the provisions of the law, such as imprisonment in a detention house and fines. Finally, Chapter IV contained the so-called “miscellaneous transitional and closing provisions”, altogether no less than 19 sections of different subject matters, most of them procedural rules.

In the following, we will narrow the scope of this study to the presentation of the five *sui generis* cases of unfair market practices regulated in Chapter II. The first one is called “szédelgő feldicsérés” in Hungarian, which can be trans-

lated as “fraudulent praise”, and actually covered all manners of misleading advertising. In this sense we can also say that Act V of 1923 was not just the first Hungarian competition law, but also the first advertising law of Hungary. As László Pribula establishes, it was “a worldwide tendency” that unfair advertising was first regulated in competition laws.³³ The Hungarian courts had already been proceeding in similar cases based on § 58 of the Industry Act,³⁴ however, we agree with Kinga Pázmándi that this new regulation can be considered as the root of today’s law against unfair advertising.³⁵ With a similar approach as that of the regulation of our time,³⁶ the first section of Chapter II not just prohibited the spreading of false information, but misrepresentation of true facts, too. Furthermore, § 4 of the law explicitly prohibited the marketing of domestic products as foreign-made, and vice versa.³⁷ Finally, by virtue of § 6, any reference to a prize, medal or certificate received at an international exhibition could only be made by Hungarian undertakings with a ministerial license.

The second sub-chapter of the law contained the ban of “usurpation and imitation”. Concerning the name of an undertaking, a similar prohibition was already known in the Hungarian commercial law: the Hungarian Commercial Code (Act XXXVII of 1875) protected the priority right of company names with penalties and the possibility of claiming compensation of damages from the usurper (§ 24).³⁸ A similar regulation was in force concerning trademarks.³⁹ Now the competition law extended the priority right of company names to commercial names, and to the names and

³⁰ KUNCZ, Életem 394.

³¹ The official text of Act V of 1923 is available at <https://net.jogtar.hu/ezer-ev-torveny?docid=92300005.TV> in Hungarian language (last access: 11/10/2023).

³² MESZLÉNYI, Tisztességtelen versenyről 7.

³³ PRIBULA, A reklámok jogi szabályozásának 344.

³⁴ MESZLÉNYI, Tisztességtelen versenyről 4.

³⁵ PÁZMÁNDI, Hirdetésre története 16–17.

³⁶ BALOGH, Szocializmusban 271.

³⁷ PRIBULA, A reklámok jogi szabályozásának 345.

³⁸ See (in Hungarian) <https://net.jogtar.hu/ezer-ev-torveny?docid=87500037.TV> (last access: 11/10/2023).

³⁹ See Chapter III of Act II of 1890 on the protection of trademarks (in Hungarian) at <https://net.jogtar.hu/ezer-ev-torveny?docid=89000002.TV> (last access: 11/10/2023).

“characteristic appearances” of the products as well,⁴⁰ and made possible the seizure of the infringing products already during the procedure as a provisional measure. Finally, the court could order to deprive the products of their infringing features “even if it shall mean the destruction of the products themselves”. The legal consequences of an usurpation or imitation in business practice were (and are also today)⁴¹ the same as the means of protection of privacy and personal integrity.⁴²

In the third title of Chapter II, a one-sentence prohibition can be found. The law prohibited the so-called *dénigrement*, i.e. the infringement of the competitor’s reputation. Similarly to the regulation of misleading advertisements, this section prohibited the misrepresentation of true facts as well as making false statements, if such behaviour “jeopardised the credit or good reputation” of the competitor, or “diminished its creditworthiness”. Again, we can establish that Act V of 1923 serves as a model for our modern legislation. Putting it side-by-side with the regulation in force today (§ 3 of Act LVII of 1996), we may discover an almost identical wording. Furthermore, it is worth to be mentioned that Act XLI of 1914 “on the protection of honour” had already introduced this regulation in Hungarian (criminal) law concerning defamation, including a reference to diminution of creditworthiness as well.⁴³ This unfair and illegal behaviour was also mentioned in the contemporary literature as “discreditation” (Ödön Kuncz himself refers to the classification worked out in the French court practice in this regard, as the word *dénigrement* is also a French technical term).⁴⁴

The fourth sub-chapter regulated a special kind of unfair practice in the law of contracts called “snowball contracts” in its title, but in parentheses also referred to as “hydra”, “label” or “avalanche” agreements. In our law of today, such transactions are regulated in the Criminal Code under the expression “pyramid scheme contracts”,⁴⁵ and are to be punished with a maximum of three years of imprisonment.⁴⁶ Act V of 1923 provided a well-understandable description of such agreements: in the case of a snowball contract, the customer can receive the product or service “only if he recruits a certain number of further customers, and should it not happen, he suffers a prejudice”. These contracts were to be deemed null and void (including the further contracts stipulated by the customer with third parties to be recruited to the network), the already paid purchase prices and other compensations had to be reimbursed, and the seller or service provider were liable for the damages caused.

Finally, the fifth title of Chapter II prohibited the “disclosure or unauthorised usage of a business or industrial secret”. This prohibition was extended to the employees as well, i.e., not just the company itself, but also its employees were personally liable for the breaches of business secrecy. Today, the protection of business secret falls under the scope of a separate law (Act LIV of 2018 “on the protection of trade secrets”),⁴⁷ however, for several decades this topic was regulated in details under § 4 of Act LVII of 1996, i.e., the competition law. Concerning the employees co-operating in the disclosure of their employer’s business secret to third persons,

⁴⁰ The expression “characteristic appearance” (in Hungarian: “jellegzetes külső”) is used with an additional reference to packaging in our present-day competition law as well, see § 6 of Act LVII of 1996 as effective on 1 January 2019 at https://www.gvh.hu/pfile/file?path=en/legal_background/rules_for_the_hungarian_market/competition_act/competition-act-documents/joghatter_tpv_t_hataly_20190101_a&inline=true (last access: 11/10/2023).

⁴¹ See § 86 of Act LVII of 1996.

⁴² PÁZMÁNDI, Hirdetésre története 17.

⁴³ NYIKES, Vissza a gyökerekhez 12. The official Hungarian text of Act XLI of 1914 see at <https://net.jogtar.hu/ezer-ev-torveny?docid=91400041.TV> (last access: 11/10/2023).

⁴⁴ KUNCZ, tisztességtelen verseny II, 84.

⁴⁵ PRIBULA, A reklámok jogi szabályozásának 345.

⁴⁶ Section 412 of Act C of 2012 on the Criminal Code, in English translation see at https://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf (last access: 11/10/2023).

⁴⁷ For an unofficial English translation see <https://njt.hu/jogszabaly/en/2018-54-00-00> (last access: 11/10/2023).

we can find a specific prohibitory rule in the labour law as well (see Act I of 2012 of the Labour Code, § 8 para. 4).⁴⁸

From the above one can establish that the structure of the new law was very similar to that of the second draft of 1907 prepared by Gusztáv Emich. Chapter II had the title “Some of the more important transgressions of the limits of business fairness” from which it is clear that it contained some specific forms of unfair behaviours, however this list was only indicative, i.e., if an unfair business practice could not be classified into any of these categories, it could still be attacked based on the general clause of Chapter I. As we could see, the explicitly mentioned cases of unfair business practices were misleading advertising, usurpation and imitation, infringement of reputation and creditworthiness, “snowball contracts”, and breach of secrecy. This list was narrower than that of Emich’s draft: the prohibition of unauthorised sell-outs had been left out. For an unknown reason, it was incorporated in the criminal provisions, and later (in 1933) a separate law against such sell-outs was also adopted.

According to the logic of the new regulation, when an unfair business practice was detected, the aggrieved party (i.e., the competitor) or the association of traders (Chamber of Commerce) had two options that could also be used in parallel. The first way of proceeding was to file a private law lawsuit against the infringing party. In the lawsuit the aggrieved competitor could ask the court to order the termination of the unfair business practice (prohibitory injunction); furthermore, if the given behaviour (the infringement of the prohibition of unfair competition) was intentional or was committed by negligence, the injured competitor could ask for compensation of damages. If it was the Chamber of Commerce that proceeded against the unfair competitor, this second option was logically not open; the trade association was entitled to

submit a prohibitory injunction lawsuit only. The second way was to start a criminal procedure, provided that the given unfair behaviour was classified in Chapter III of the law as a criminal offence or a misdemeanour (a minor offence). It is important to mention that not all unfair business practices were classified like this, only the more serious cases, such as the intentional misleading in public advertisements or communications, the intentional usurpation of the competitor’s name or symbol, the intentional imitation of the competitor’s product, the intentional breach of business secret, and the cases of business corruption (bribery). Negligent behaviours could not be punished by the instruments of criminal law at all. In the criminal procedure the injured party or the trade association had to act as prosecutor in accordance with the rules of private prosecution.

3. Unfair business practices then and now

An interesting difference between the legislators’ approach of that time and today is the criminal law aspect. Today, our Criminal Code does contain some serious cases of illegal behaviours in the field of economic competition (such as intentional misleading of consumers, breach of business secrecy, and imitation), but the focus of the infringements is clearly on public administration proceedings; the usage of instruments of criminal law is rather exceptional. Meanwhile, at the beginning of the 20th century, the “criminal provisions” were in the first place. The first draft law against unfair competition (1900) listed the penal sanctions first, and mentioned compensation of damages as the only private law sanction only there after. The situation was more balanced in the second draft (1907) and in the final law (1923), but the significance of criminal law remained remarkable. This can be well seen from the fact

⁴⁸ PRIBULA, A reklámok jogi szabályozásának 345. For an unofficial English translation of the current Hungarian Labour Code see <https://mta-pte.ajk.pte.hu/downloads/12-01.tv-en.pdf> (last access: 11/10/2023).

that one of the authors of the bill, Elemér Balás P. published a book already in 1924 on the criminal law aspects of the new regulation.⁴⁹

From today's perspective it is also conspicuous that no competition authority was established in 1923 (in order to proceed against the distortions of competition), and consequently, none of the unfair business practices mentioned in the law was sanctionable with an antitrust fine. Seeking the first competition authority in Hungarian legal history, the competences granted by Act XX of 1931 to the minister of commerce and his advisory body called Cartel Committee can be mentioned, however, the powers of the minister and the Committee were limited to the supervision of cartels (market restricting agreements between competitors), i.e., were not extended to any other issue of competition law.⁵⁰ Proceedings in cases of breaches of the requirement of business fairness fall also today under the competence of the courts, however (further to the still existing private law remedies), misleading of business partners and consumers, as well as all the illegal advertising activities, shall be investigated and sanctioned by the competition and consumer protection authorities, sometimes with serious fines of dissuasive effect.

The third significant difference is that, although the private law remedies offered to the harmed competitors (prohibitory injunction and compensation of damages) were almost identical to the competition law regulation of today, and – at least concerning the “snowball contracts” – the establishment of the nullity of contracts was also an option,⁵¹ the consumers did not get any direct legal protection from the law of 1923. If a consumer was not directly

involved in a contractual relationship, he was unable to initiate any legal procedure under any legal title against the perpetrators of an unfair business practice.⁵² His only chance was that a competitor or the trade association also felt the given behaviour harmful (but his losses were not subject to any lawsuit even in this latter case). The first Hungarian legal regulation explicitly extended to consumer protection purposes was adopted in the so-called Socialist era, namely Act IV of 1984 “on the prohibition of unfair economic activities” (the law that replaced Act V of 1923 after sixty years, on 1 January 1985).⁵³

However, the problems competition law faced were very similar to those of today – that is why the title “Nihil sub sole novum” was chosen for this study. For reasons of space, we cannot refer to all relevant fields and examples. In the following, we will deal with three characteristic cases of unfair advertising practices. The first one is called “bait-and-switch”, i.e., when a trader is advertising a product at a fairly low price, but the consumer entering the shop realises that the advertised product is missing, therefore he may choose from the selection of more expensive products only. According to a judgment made by the Curia in 1937, “advertising a cheap product in a moment when it is not on stock” is illegal.⁵⁴ A good example for a similar decision of the Office of Economic Competition of today (hereinafter referred to “GVH”, using its official Hungarian abbreviation) is the ruling in a case against Rossmann Drogerie in which GVH established that Rossmann committed a breach of competition law when one of its product advertised at reduced

⁴⁹ BALÁS, *A tisztességtelen verseny büntetőjoga*.

⁵⁰ For a detailed analysis of the role of the Cartel Committee established by Act XX of 1931 see VARGA, *Cartel Supervision* 121–128, 121–123.

⁵¹ From today's perspective see MENYHÁRD, *Contracts* 186.

⁵² BALOGH, *Szocializmusban* 280; NOCHTA, *Belföldi reklámtevékenység* 29.

⁵³ NOCHTA, *Belföldi reklámtevékenység* 25; PÁZMÁNDI, *Hirdetésre története* 15.

⁵⁴ Decision No. P. IV. 575/1937. of the Curia. See: Grill-féle Új Döntvénytár [Grill's New Collection of Case Law] Vol. XXX, Budapest 1938, 720–721 (Case No. 1107).

price (999 HUF instead of 4149 HUF) was actually not available in the shops, at least at the beginning of the promotion.⁵⁵

Another characteristic phenomenon of unfair advertising is the usage of superlatives like “our product is the best” or “most beautiful”. In the 1930s, competition law practice was quite permitting in this respect. According to the opinion of the Curia, slogans like “the most beautiful” and “cheapest” are “too general”, and “as the public does not attribute any objective content to them, they are not misleading”.⁵⁶ GVH was more cautious in 2007 establishing in a case well-known in Hungary (“a legszebbet a legolcsóbban a Klapkától” – “the most beautiful products at the cheapest prices from Klapka”) that “if an objective standard cannot be set up and this is clear for the consumers as well” (“most beautiful”), the usage of superlative can be lawful, however, if a trader alleges that his product is “the cheapest”, this fact has to be substantiated with evidences. As Klapka Pawn Shop, having accepted this observation, withdrew all its advertisements, GVH decided not to continue the proceeding.⁵⁷ (In today’s practice of comparative advertising – in line with the relevant Directive 2006/114/EC⁵⁸ – a comparative statement can be considered lawful if the methodology of the comparison is clear and objective, and the properties of the products are actually comparable.)

Finally, as the third example, we would like to refer to fictitious sell-outs, i.e., when a trader publishes an advertisement falsely declaring that his shop is going to be closed, therefore the whole stock must be liquidated and the consumers may buy products there at exceptionally advantageous prices. In this sense, the legal situation was clear at the time of adoption of Act V of 1923: by virtue of the Industry Act, sell-outs could only be made upon a prior license of the minister of commerce. It is not surprising that in a case when the trader had not obtained a permit for a sell-out continuously advertised from November 1933 to February 1934, the Curia declared the illegality of his behaviour.⁵⁹ In today’s law, no official authorisation is needed for making sell-outs, thus such activities fall under the scope of misleading advertisement cases. In a recent decision, GVH established that a company called “Carpet Gallery Ltd” (Szőnyeg Galéria Kft.) committed a breach of law advertising a “sell-out” for 21 consecutive months (as the decision says, “during almost the whole existence of the company”), and imposed a HUF 25 million fine on it.⁶⁰

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⁵⁵ Decision No. Vj-73/2006/20 of the Competition Council of the Office of Economic Competition published on 25 October 2006. The original (Hungarian) text of the decision can be downloaded from https://www.gvh.hu/pfile/file?path=/dontesek/versenyhivatali_dontesek/versenyhivatali_dontesek/dontesek_2006/print_Vj073-2006_h.pdf (last access: 11/10/2023).

⁵⁶ Decision No. P. IV. 1466/1935. of the Curia. See Jogi Hírlap (1935:46), 366. (Case No. IX. 1072.).

⁵⁷ Decision No. Vj-174/2006 of the Consumer Protection Office of the Office of Economic Competition (12 February 2007). The original (Hungarian) text of the decision can be downloaded from https://www.gvh.hu/pfile/file?path=/dontesek/versenyhivatali_dontesek/versenyhivatali_dontesek/dontesek_2006/vj_174_2006_v_v.pdf (last access: 11/10/2023).

⁵⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006L0114> (last access: 11/10/2023).

⁵⁹ Decision No. P. IV. 1382/1935. of the Curia. See Kereskedelmi jog (1935:9) 148.

⁶⁰ Decision No. VJ/13-64/2022 of the Competition Council of the Office of Economic Competition (27 April 2023). See the relating press release in English (“Fictitious promotions, final sale lasting almost 2 years – carpet retailers fined by GVH”) at https://www.gvh.hu/en/press_room/press_releases/press-releases-2023/fictitious-promotions-final-sale-lasting-almost-2-years---carpet-retailers-fined-by-gvh (last access: 11/10/2023).

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