

Act XLVII of 2008

on the Prohibition of Unfair Business-to-Consumer Commercial Practices¹

With a view to protecting the interests of consumers, to fostering fair market practices and to improve the efficiency of combating unfair commercial practices, recognizing the weight of self-governance to eliminate unfair commercial practices and - for this purpose - to foster the enforcement of codes of conduct established within the framework of self-governance, Parliament has adopted the following Act.

General Provisions

Section 1

(1) This Act shall apply to unfair business-to-consumer commercial practices, before, during and after a commercial transaction in relation to goods, and it lays down the requirements relating to codes of conduct applicable to such commercial practices, as well as the provisions for proceedings in cases of infringements of these codes of conduct.

(2)² This Act applies to commercial practices carried out in the territory of Hungary, and to those that involve any citizen in the territory of Hungary in his role as consumer.

(3) This Act shall not apply to:

a) the conclusion, validity and legal aspects of contracts, nor to civil claims arising out of or in connection with commercial practices;

b) the establishment, exercise and enforcement of intellectual property rights;

c) the certification and indication of the standard of fineness of articles of precious metal.

(4) Specific other legislation and the legislation adopted for the implementation of such legislation may establish rules stricter and more elaborate than those laid down in this Act in terms of consumer information relating to:

a) financial services and activities auxiliary to financial services, insurance activities, and the activities of insurance intermediaries and insurance consultants, investment service activities and ancillary services to investment activities, commodity exchange services, services provided by voluntary mutual insurance funds and services provided by private pension funds;

b) immovable properties;

c) the enforcement of requirements pertaining to the health and safety aspects of goods;

d) the enforcement of requirements pertaining to the protection of the environment; or

e) the exercise of regulated professions specified in Act C of 2001 on the Recognition of Foreign Diplomas and Certificates for the enforcement of the professional rules pertaining to the regulated profession in question, regarding, in particular, the independence, dignity and honor of the profession, professional secrecy and fairness towards consumers to whom the services are provided, and other members of the profession.

¹ Promulgated by Parliament on 28 June 2008.

² Amended: by Section 330 of Act CCI of 2011. In force: as of 1. 01. 2012.

(5) Specific other legislation on the activities specified in Subsection (4) above may establish rules stricter and more elaborate than those laid down in this Act relating to commercial practices:

- a) if so required for the implementation of any binding Community legislation; or
- b) where it is expressly permitted relating to certain goods or sectors of goods by any binding Community legislation.

Section 2

For the purposes of this Act:

- a) ‘consumer’ shall mean any natural person who is acting for purposes which are outside his trade, business or profession;
- b) ‘business entity’ shall mean any person who, in commercial practices, is acting for purposes relating to his trade or business;
- c) ‘goods’ shall mean any goods of a fungible nature that are capable of being delivered, including money, securities and financial instruments, and natural resources that can be utilized as capital goods (hereinafter referred to collectively as “product”), including, furthermore, immovable property, services, rights and obligations;
- d)³ ‘business-to-consumer commercial practices’ shall mean any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a person for a business entity or in the name and on behalf of a business entity, directly connected with the promotion, sale or supply of a product to consumers;
- e) ‘commercial communication’ shall mean any form of communication made for the purposes of and directly connected to the trade or business of a business entity;
- f) ‘advertising’ shall have the meaning defined in the act on the basic requirements and certain restrictions of commercial advertising activities;
- g) ‘invitation to purchase’ shall mean a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase;
- h) ‘transactional decision’ shall mean any decision taken by a consumer concerning whether, how and on what terms to enter into a contract or to exercise a contractual right in relation to the product;
- i) ‘code of conduct’ shall mean an agreement or set of rules - adopted within the framework of self-regulatory practices - which defines the behavior of business entities who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors (hereinafter referred to as “submission to the code of conduct”);

Prohibition of Unfair Commercial Practices

Section 3

- (1) Unfair commercial practices shall be prohibited.
- (2) A commercial practice shall be unfair if:

³ Amended: by Section 404 of Act LVI of 2009. In force: as of 1. 10. 2009. The change does not effect the English version.

a) it is contrary to the requirements of professional diligence, i.e. the trader acting in commercial practices fails to use the standard of special skill and care which a trader may reasonably be expected to exercise, commensurate with honest market practice and/or the general principle of good faith (hereinafter referred to as “requirements of professional diligence”); and

b) it materially distorts or is likely to materially distort the economic behavior with regard to the product of the average consumer whom it reaches or to whom it is addressed, using this practice to impair the consumer’s ability to make an informed decision and thereby causing the consumer to take a transactional decision that he would not have taken otherwise; (hereinafter referred to as “materially distort the economic behavior of consumers”).

(3) Within the meaning of Subsection (2), in particular, commercial practices shall be unfair which are misleading as set out in Sections 6 and 7, or are aggressive as set out in Section 8.

(4) The Schedule contains the list of those commercial practices which shall in all circumstances be regarded as unfair.

Section 4

(1) In determining as to whether a commercial practice is considered unfair or otherwise, the process shall take as a benchmark the average consumer, who is reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors relating to the goods in question. Where a commercial practice is specifically aimed at a particular group of consumers, it shall be assessed from the perspective of the average member of that group.

(2) Where certain characteristics such as age, physical or mental infirmity or credulity make consumers particularly susceptible to a commercial practice or to the underlying goods and the economic behavior only of such consumers is likely to be distorted by the practice in a way that the trader acting in commercial practices can reasonably foresee, it shall be considered appropriate to ensure that they are adequately protected by assessing the practice from the perspective of the average member of that group.

(3) The common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally shall not be treated as a commercial practice likely to materially distort economic behavior.

Section 5

A code of conduct may not promote unfair commercial practices.

Section 6

(1) A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

a) the existence or nature of the goods, taking into account the statutory provisions relating to the names of products;

b) the main characteristics of the goods, in particular:

ba) their execution, composition, technical features, accessories;

- bb) their quantity;
- bc) their geographical or commercial origin;
- bd) their method and date of manufacture or provision;
- be) their availability, delivery;
- bf) their usage, facts regarding use and maintenance;
- bg) their fitness for purpose, results to be expected from its use, benefits;
- bh) their dangers, risks;
- bi) their environmental impact;
- bj) their impact on health; or
- bk) the way they are controlled or tested and the results;
- c) the price of the goods or the manner in which the price is calculated, or the existence of a specific price advantage or discount;
- d) tax exemption, tax allowance or the use of other tax advantage provided in connection with the goods;
- e) the need for a service, part, replacement or repair in connection with the goods;
- f) after-sale customer assistance and complaint handling provided in connection with the goods;
- g) the nature, attributes and rights of the business entity or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;
- h) the extent of the business entity's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to sponsorship or approval of the business entity or the product; or
- i) the consumer's rights or the risks of unfavorable legal outcomes he may face in connection with the transaction.

(2) A commercial practice shall also be regarded as misleading if it involves:

- a) a commercial practice which creates confusion with any business entity or its corporate name, or with any products, trade marks, trade names or other distinguishing marks of such business entity;
- b) non-compliance by the business entity with commitments contained in codes of conduct by which the business entity has undertaken to be bound, where:
 - ba) the commitment is not merely aspirational but is firm and is capable of being verified; and
 - bb) the business entity indicates in a commercial practice that he is bound by the code, if taking account of the factual context it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

Section 7

(1) A commercial practice shall be regarded as misleading if:

- a) taking account of all its features and circumstances and the limitations of the communication medium, it omits or conceals material information that the average consumer needs, according to the context, to take an informed transactional decision, or provides such information in an unclear, unintelligible, ambiguous or untimely manner, or fails to identify the commercial intent of the commercial practice if not already apparent from the context; and
- b) thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise
(hereinafter referred to as "misleading omission").

(2) Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader acting in commercial practices to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted, and whether it constitutes a misleading omission.

(3) In the application of this Section, information requirements established by:

- a) any directly applicable Community legislation;
 - b) specific other legislation adopted for the transposition of any Community legislation that is binding in its entirety; and
 - c) specific other legislation referred to in Paragraphs a)-d) of Subsection (4) and Paragraph b) of Subsection (5) of Section 1;
- shall be regarded as material in relation to the commercial communication defined therein.

(4) The minister in charge of the judicial system shall publish on the website of his ministry a non-exhaustive list of the legislation adopted for the transposition of binding Community legislation specified in Paragraph b) of Subsection (3).

(5) In the case of an invitation to purchase, the following information shall be regarded as material:

- a) the main characteristics of the goods, to an extent appropriate to the medium and the goods;
- b) the geographical address and the identity of the business entity, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf the trader is acting in commercial practices;
- c) the price or fee inclusive of value added tax and other taxes, or where the nature of the product means that the price or fee cannot reasonably be calculated in advance, the manner in which the price or fee is calculated, as well as, where appropriate, all additional charges such as, in particular freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- d) the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;
- e) for contracts involving a right of withdrawal for the consumer, an indication of such a right.

(6) Misleading omission shall not apply in the cases mentioned in Subsection (5) if the information is already apparent from the context.

Section 8

(1) A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence for exploiting a position of power in relation to the consumer so as to apply pressure, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct and the consumer's ability to make an informed decision with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.

(2) In determining whether a commercial practice is aggressive, account shall be taken of:

- a) the timing, location, nature or persistence of the commercial practice;
- b) the use of threatening, frightening or abusive language or behavior in commercial practices;
- c) the exploitation by the trader acting in commercial practices of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;

- d) any onerous or disproportionate non-contractual barriers imposed by the trader acting in commercial practices where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;
- e) any threat to take any action that cannot legally be taken.

Liability for Violation of the Prohibition of Unfair Commercial Practices

Section 9

(1) Liability for any violation of the prohibition of unfair commercial practices shall lie with the business entity directly connected with the promotion, sale or supply of goods to which the commercial practice in question pertains.

(2) The business entity referred to in Subsection (1) shall be held liable also if the commercial practice is carried out under contract by another person acting on behalf of or for the business entity in question.

(3) By way of derogation from Subsection (2), liability for any infringement arising in connection with the representation of commercial communication shall also lie with the person who uses means suitable for the publication of commercial communication to disseminate commercial communication, and with the person professionally involved in producing or creating commercial communication in the context of his economic activities, or in providing other related services, with the exception if the infringement originates from the carrying out of the instructions of the business entity referred to in Subsection (1). The aforesaid persons shall bear joint and several liability with the business entity referred to in Subsection (1) for damages resulting from such unlawful commercial practices.

(4) Liability for any infringement of the provisions contained in Section 5 lies with the person or persons drawing up the code of conduct, or the person or persons in charge of the review of the codes or for monitoring the enforcement of the codes by the business entities that have decided freely to adhere to such codes.

Competent Authorities

Section 10

(1) Subject to the exceptions set out in Subsections (2) and (3), the consumer protection authority shall have jurisdiction in connection with any infringement of the provisions relating to the prohibition of unfair commercial practices.

(2)⁴ Subject to the exceptions set out in Subsection (3), the Pénzügyi Szervezetek Állami Felügyelete (*Hungarian Financial Supervisory Authority*) shall have jurisdiction in connection with any violation of the provisions relating to the prohibition of unfair commercial practices if the commercial practices in question relate to such activities of the business entity that is conferred under the competence of the Pénzügyi Szervezetek Állami Felügyelete in accordance with Act CLVIII of 2010 on the Hungarian Financial Supervisory Authority (hereinafter referred to as “HFSA”).

⁴ Established: by paragraph (2) Section 134 of Act CLVIII of 2010. In force: as of 1. 01. 2011.

(3) The Hungarian Competition Authority shall have jurisdiction in connection with any infringement of the provisions relating to the prohibition of unfair commercial practices if the commercial practices in question exert material influence upon competition.

(4) Subsection (3) shall not apply where the unfair commercial practice is apparent only on the product or on the packaging of the product, or fixed to the product by other means (hereinafter referred to collectively as “label”), or on any warnings and instructions for its use and operation or in the warranty note, or if it is carried out by the infringement of the information requirement set out in Subsection (3) of Section 7.

(5) If the commercial practice displayed on the label is carried out by other means of communication presented in the same way and with the same content, and with respect to the latter commercial practice the Hungarian Competition Authority has jurisdiction due to its material effect on competition, the Hungarian Competition Authority shall also have powers to adjudge the infringement committed in connection with the label through the commercial practice in question.

(6)⁵ Subsection (3) shall not apply where the infringement of the prohibition of unfair commercial practices covers a case of non-compliance with commitments contained in codes of conduct which defines the behavior of the business entities referred to in Subsection (2) who undertake to be bound by the code in relation to one or more particular commercial practices mentioned in Subsection (2).

Section 11

(1) In the application of Section 10, in determining the material effect of competition the following criteria shall apply, taking into account the attributes specific to the relevant market:

a) the extent of the commercial practices applied, with due regard, in particular, to the nature of the means of communication, the size of the geographical area affected by the infringement, the number of shops affected by the infringement, the duration of the infringement or the value of the goods affected by the infringement; or

b) the size of the business entity liable for the infringement based on the amount of net sales revenues.

(2) The material effect of competition shall apply without prejudice to any other circumstances if:

a)⁶ the commercial practice is carried out through a media service provider providing national media services;

b) the commercial practice is carried out through a periodical of nationwide circulation or a daily newspaper distributed in at least three counties;

c) the commercial practice is carried out through direct marketing targeted to consumers of at least three counties; or

d) the commercial practice aiming to promote sales is carried out in at least three counties.

Section 12

(1) With a view to the effective exercise of their supervisory functions relating to any infringement of the prohibition of unfair commercial practices, the authorities mentioned in

⁵ Enacted: by Section 79 of Act CXLVIII of 2009. In force: as of 1. 01. 2010.

⁶ Established: by point 1 paragraph (1) Section 226 of Act CLXXXV of 2010. In force: as of 1. 01. 2011.

Section 10 shall cooperate with each other. Cooperation of the relevant authorities shall cover, in particular, the exchange of information relating to their judicial principles and the uniform application of substantive and procedural regulations, so as to avoid any collision of jurisdiction and to facilitate the efficient settlement of any disputes relating to jurisdiction.

(2) The exchange of information within the framework of cooperation, in particular, the procedure for the notification prescribed in Subsection (3) of Section 20 and Subsection (2) of Section 23, in Subsection (3) of Section 25 and Subsection (2) of Section 26, shall be governed by way of a cooperation agreement.

(3) The consumer protection authority, the Hungarian Competition Authority and the Hungarian Financial Supervisory Authority shall enter into a cooperation agreement to lay down the detailed rules for their cooperation, and shall review such agreement on an annual basis and make it available to the general public on their official websites.

Common Provisions

Section 13

Proceedings may not be opened after a period of three years following the time of the act of commercial practices. If the infringement is constant, the time limit shall commence at the time the infringement is terminated. Where an illegal conduct is realized through failure to terminate a particular situation or predicament, the above-specified period shall not commence as long as such situation or predicament continues to prevail.

Section 14

At the request of the competent authority the business entity shall provide proof to verify the authenticity of any fact comprising a part of commercial practices. In the event of the business entity's failure to comply, the fact in question shall be construed as untrue. The authority's notice shall contain a warning for the business entity to this effect.

Section 15

(1) Proceedings conducted under this Act shall not preclude the possibility for the aggrieved party to file a civil suit in the court of law to enforce his claim arising in connection with unfair commercial practices.

(2) In court proceedings the burden of proof relating to the authenticity of any fact comprising a part of commercial practices lies with the business entity.

(3)⁷ The provisions contained in Subsections (1)-(6) of Section 88/B of Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition shall also apply to civil actions brought before the court of law to enforce claims arising out of or in connection with unfair commercial practices.

Section 16

If the act of unfair commercial practices has not yet been carried out, however, based on the business entity's activities - in particular, the setting up of the necessary conditions, the

⁷ Enacted: by paragraph (3) Section 134 of Act CLVIII of 2010. In force: as of 1. 01. 2011.

concluding of contracts and the acquisition of assets - it is presumed that such act will in fact be carried out, the competent authorities shall have powers to prohibit the planned commercial practices in advance.

Section 17

(1)⁸ The authority specified in this Act shall have jurisdiction in proceedings governed under this Act where so prescribed in specific other act or government decree in connection with any infringement of the provisions of this Act and other legislation adopted for the implementation of this Act, or in any directly applicable Community legislation relating to business-to-consumer commercial practices. In such proceedings the competent authority shall investigate the infringement of the provisions of this Act, specific other act or government decree or the legislation adopted for the implementation thereof, or any directly applicable Community legislation relating to business-to-consumer commercial practices.

(2) If in the proceedings referred to in Subsection (1) the competent authority finds that the commercial practice in question did not violate the prohibition of unfair commercial practices, however, it infringes upon the provisions of specific other legislation or the legislation adopted for the implementation thereof, or any directly applicable Community legislation relating to business-to-consumer commercial practices, it shall have powers to impose the sanctions prescribed in the legislation referred to in Subsection (1).

(3)⁹ If in the proceedings referred to in Subsection (1) the competent authority finds that the commercial practice in question also infringes upon the provisions of specific other legislation or the legislation adopted for the implementation thereof, or any directly applicable Community legislation relating to business-to-consumer commercial practices, apart from the sanctions prescribed in this Act, it shall have powers to impose any of the sanctions prescribed in the specific other act or legislation adopted by authorization of this act to in Subsection (1), with the exception that the fine, if applicable, shall be levied according to the statutory provisions that provide for higher sums of fines, determining the amount on the grounds that commercial practice in question is unlawful on both counts.

Section 18

If the business entity held accountable for the infringement carried out the act of unfair commercial practices by way of an outside contractor [Subsection (2) of Section 9], and the infringement is not eliminated within the time limit prescribed in the resolution of the competent authority, the competent authority shall have powers, under special circumstances, to order the outside contractor by way of resolution to execute the first resolution to the extent pertaining to the elimination of the unfair commercial practices, provided that there is no other way to terminate the infringement, and provided that the first resolution was delivered to the outside contractor as well.

Section 19

In proceedings for establishing unfair commercial practices:

⁸ Amended: by Section 404 of Act LVI of 2009. In force: as of 1. 10. 2009.

⁹ Amended: by Section 404 of Act LVI of 2009. In force: as of 1. 10. 2009.

- a) Act CLV of 1997 on Consumer Protection (hereinafter referred to as “CPA”) shall apply in connection with the proceedings of the consumer protection authority;
- b) the provisions of the HFSA shall apply in connection with proceedings of the Hungarian Financial Supervisory Authority;
- c) Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (hereinafter referred to as “UMPA”) shall apply in connection with the proceedings of the Hungarian Competition Authority;
subject to the derogations set out in this Act.

Specific Provisions Relating to the Proceedings of the Consumer Protection Authority

Section 20

(1)¹⁰ Where the Hungarian Competition Authority is vested with jurisdiction relating to unfair commercial practices detected by the consumer protection authority, or if the proceedings are opened upon request in connection with the infringement of the prohibition of unfair commercial practices, the consumer protection authority shall transfer the request, or the documents of the case, to the Hungarian Competition Authority without undue delay, but within thirty days from the day following the date of detection of the infringement or upon receipt of the request, and shall inform the client accordingly.

(2) Within the framework of probing the scope of competence of the consumer protection authority, the business entity shall provide information at the authority’s request as to the means of communication used in connection with the relevant commercial practices.

(3)¹¹ The consumer protection authority shall notify the Hungarian Competition Authority concerning the opening of proceedings in connection with any violation of the prohibition of unfair commercial practices and shall supply the information necessary for identification of the case, meaning in particular the data for the identification of the business entity affected and of the person requesting the proceedings, supplied by that person, including the relevant facts of the case.

Section 21

(1) The provisions of this Act are treated as consumer protection regulations in the application of the CPA.

(2) The consumer protection authority may impose the measure referred to in Section 16 in accordance with Subsection (1) of Section 49 of the CPA.

Specific Provisions Relating to the Proceedings of the Hungarian Financial Supervisory Authority

¹⁰ Amended: by Section 404 of Act LVI of 2009. In force: as of 1. 10. 2009. Amended: by paragraph (84) Section 2 of Act CLII of 2010. In force: as of 1. 01. 2011.

¹¹ Amended: by Section 405 of Act LVI of 2009. In force: as of 1. 10. 2009.

Section 22¹²

Section 23

(1)¹³ Where the Gazdasági Versenyhivatal (*Hungarian Competition Authority*) is vested with jurisdiction relating to unfair commercial practices detected by the Pénzügyi Szervezetek Állami Felügyelete (*Hungarian Financial Supervisory Authority*) (hereinafter referred to as “Authority”) in its any proceedings, or if the proceedings are opened upon request in connection with the infringement of the prohibition of unfair commercial practices, the Authority shall transfer the request, or the documents of the case to the Gazdasági Versenyhivatal without undue delay, but within thirty days from the day following the date of detection of the infringement or upon receipt of the request, and shall inform the client accordingly.

(2) Within the framework of probing the scope of competence of the Authority, the business entity shall provide information at the Authority’s request as to the means of communication used in connection with the relevant commercial practices.

(3)¹⁴ The Authority shall notify the Gazdasági Versenyhivatal concerning the opening of proceedings in connection with any violation of the prohibition of unfair commercial practices, or if the infringement of the prohibition of unfair commercial practices is detected in its any proceedings, and shall supply the information necessary for identification of the case, meaning in particular the data for the identification of the business entity affected and of the person requesting the proceedings, supplied by that person, including the relevant facts of the case.

Section 24¹⁵

The measure referred to in Section 16 may also be ordered in accordance with Section 70 of the HFSA.

Specific Provisions Relating to the Proceedings of the Hungarian Competition Authority

Section 25

(1)¹⁶ By way of derogation from what is contained in Subsection (2) of Section 43/H and in Subsection (1) of Section 43/I of the UMPA, the provisions of the Act on the General Rules of Administrative Proceedings pertaining to jurisdictional disputes shall also apply relating to proceedings opened upon notification or upon complaint lodged in connection with any violation of the prohibition of unfair commercial practices.

¹² Repealed: by subparagraph f) paragraph (5) Section 84 of Act CXLVIII of 2009. No longer in force: as of 1. 01. 2010.

¹³ Established: by paragraph (1) Section 80 of Act CXLVIII of 2009. In force: as of 1. 01. 2010. Amended: by paragraph (84) Section 2 of Act CLII of 2010. In force: as of 1. 01. 2011.

¹⁴ Established: by paragraph (2) Section 80 of Act CXLVIII of 2009. In force: as of 1. 01. 2010.

¹⁵ Established: by paragraph (4) Section 134 of Act CLVIII of 2010. In force: as of 1. 01. 2011.

¹⁶ Amended: by Section 404 of Act LVI of 2009. In force: as of 1. 10. 2009. Amended: by point 2 paragraph (1) Section 226 of Act CLXXXV of 2010. In force: as of 1. 01. 2011.

(2)¹⁷ In proceedings opened upon notification lodged in connection with any violation of the prohibition of unfair commercial practices the investigator shall adopt a ruling in accordance with Subsection (8) of Section 43/H of the UMPA within thirty days from the day following the date of receipt of the notification.

(3)¹⁸ The Hungarian Competition Authority shall notify the consumer protection authority concerning any notification lodged in connection with any violation of the prohibition of unfair commercial practices, and shall supply the information necessary for identification of the case, meaning in particular the data for the identification of the business entity affected and of the person requesting the proceedings, supplied by that person, including the relevant facts of the case, or in connection with the commercial practices referred to in Subsection (2) of Section 10, the Hungarian Financial Supervisory Authority.

Section 26

(1)¹⁹ The investigator shall adopt a ruling ex officio in which to order that an investigation be held in connection with any activity, conduct or predicament which is suspected to violate the provisions on the prohibition of unfair commercial practices, if it is conferred under the competence of the Hungarian Competition Authority.

(2)²⁰ The Hungarian Competition Authority shall notify the consumer protection authority concerning the opening of proceedings in connection with any violation of the prohibition of unfair commercial practices, and shall supply the information necessary for identification of the case, meaning in particular the data for the identification of the business entity affected and of the person requesting the proceedings, supplied by that person, including the relevant facts of the case, or in connection with the commercial practices referred to in Subsection (2) of Section 10, the Hungarian Financial Supervisory Authority.

Section 27

(1) As regards the administrative time limit Subsection (1), Paragraph a) of Subsection (2) and Subsections (5)-(7) of Section 63 of the UMPA shall apply.

(2) The measure referred to in Section 16 may also be ordered in accordance with Paragraph c) of Subsection (1) of Section 72 of the UMPA.

(3) The commitment referred to in Section 75 of the UMPA may also be applied if the client has already ceased the conduct investigated. In such cases the commitment shall pertain to the cessation of any repeat offense.

(4)²¹

Cooperation with the Consumer Protection Authorities of Member States of the European Economic Area

¹⁷ Amended: by Section 404 of Act LVI of 2009. In force: as of 1. 10. 2009. Amended: by paragraph (84) Section 2 of Act CLII of 2010. In force: as of 1. 01. 2011.

¹⁸ Amended: by Section 405 of Act LVI of 2009. In force: as of 1. 10. 2009.

¹⁹ Amended: by Sections 404-405 of Act LVI of 2009. In force: as of 1. 10. 2009.

²⁰ Amended: by Section 405 of Act LVI of 2009. In force: as of 1. 10. 2009.

²¹ Repealed: by subparagraph k) paragraph (1) Section 137 of Act CLVIII of 2010. No longer in force: as of 1. 01. 2011.

Section 28

(1) The consumer protection authority, the Hungarian Financial Supervisory Authority or the Hungarian Competition Authority is vested with powers - in accordance with Section 10 - for the implementation of Regulation (EC) No. 2006/2004 of the European Parliament and of the Council with a view to any intra-Community infringements of national laws on the transposition of Directive 2005/29/EC of the European Parliament and of the Council.

(2) In connection with mutual assistance the authorities referred to in Subsection (1) shall proceed in accordance with Commission Decision 2007/76/EC, as amended by Commission Decision 2008/282/EC.

(3) For information purposes, the minister in charge of the judicial system shall publish on the official website of his Ministry the list of legislation on the transposition of Directive 2005/29/EC of the European Parliament and of the Council.

Sections 29-47²²

Section 48

(1)-(7)²³
(8)-(9)²⁴
(10)²⁵

Section 49

(1)-(10)²⁶
(11)²⁷
(12)²⁸
(13)²⁹
(14)³⁰

Section 50³¹

Section 51³²

Closing Provisions

Section 52

²² Titel and sections repealed by Subsection (2) of Section 55 of this Act, effective as of 2. 9. 2008.

²³ Repealed by Subsection (2) of Section 55 of this Act, effective as of 2. 9. 2008.

²⁴ Repealed by Subsection (1) of Section 55 of Act XLVII of 2008, effective as of 30 June 2008.

²⁵ Repealed by Subsection (2) of Section 55 of this Act, effective as of 2. 9. 2008.

²⁶ Repealed by Subsection (2) of Section 55 of this Act, effective as of 2. 9. 2008.

²⁷ Repealed by Subsection (1) of Section 55 of Act XLVII of 2008, effective as of 30 June 2008.

²⁸ Repealed by Subsection (2) of Section 55 of this Act, effective as of 2. 9. 2008.

²⁹ Repealed by Subsection (1) of Section 55 of Act XLVII of 2008, effective as of 30 June 2008.

³⁰ Repealed by Subsection (2) of Section 55 of this Act, effective as of 2. 9. 2008.

³¹ Repealed by Subsection (2) of Section 55 of this Act, effective as of 2. 9. 2008.

³² Repealed by Subsection (1) of Section 55 of Act XLVII of 2008, effective as of 30 June 2008.

(1) This Act - with the exceptions set out in Subsection (2) - shall enter into force on the day following the day of promulgation.

(2) Sections 1-31, Sections 33-47, Subsections (1)-(7) and (10) of Section 48, Subsections (1)-(10), (12) and (14) of Section 49, Section 50, and Section 54 shall enter into force on 1 September 2008.

Section 53

(1) The provisions of Sections 10-28 shall apply to proceedings opened after the time of these provisions entering into force.

(2) The following provisions of the UMPA shall apply to proceedings opened after the time of these provisions entering into force:

a) Paragraph c) of Subsection (1) of Section 30, as established by Subsection (10) of Section 29 of this Act;

b) the second sentence of Subsection (3) of Section 78, as established by Subsection (11) of Section 29 of this Act;

c) Section 43/B, as established by Subsection (2) of Section 30 of this Act;

d) Section 43/G, as established by Subsection (3) of Section 30 of this Act;

e) Subsections (2) and (5) of Section 43/H, as established by Subsections (4) and (5) of Section 30 of this Act;

f) Paragraph c) of Subsection (8) of Section 43/H, enacted by Subsection (6) of Section 30 of this Act;

g) Subsection (4) of Section 43/I, as established by Subsection (7) of Section 30 of this Act;

h) Subsection (4) of Section 62, as established by Subsection (9) of Section 30 of this Act;

i) Subsections (2)-(4), (9) and (10) of Section 65, as established by Subsections (10)-(12) of Section 30 of this Act;

j) Subsection (4) of Section 67, as established by Subsection (13) of Section 30 of this Act;

k) Subsection (2) of Section 68, as established by Subsection (14) of Section 30 of this Act;

l) Subsections (2) and (3) of Section 72, as established by Subsection (15) of Section 30 of this Act;

m) Paragraph h) of Subsection (1) of Section 77, as established by Subsection (16) of Section 30 of this Act;

n) Section 88, as established by Subsection (17) of Section 30 of this Act;

o) Subsection (1) of Section 88/B, as established by Subsection (18) of Section 30 of this Act;

p) Subsection (1) of Section 89, as established by Subsection (19) of Section 30 of this Act;

q) Chapter XVII, enacted by Subsection (20) of Section 30 of this Act; furthermore

r) Section 92, as established by Subsection (21) of Section 30 of this Act.

(3) The following provisions of the HFSA shall apply to proceedings opened after the time of these provisions entering into force:

a) Sections 26/A-26/C, enacted by Subsection (2) of Section 31 of this Act;

b) Section 27, as established by Subsection (3) of Section 31 of this Act;

c) Paragraph c) of Subsection (1) of Section 28, as established by Subsection (4) of Section 31 of this Act;

d) Subsection (7) of Section 41, enacted by Subsection (8) of Section 31 of this Act;

e) Section 44/A, enacted by Subsection (9) of Section 31 of this Act, furthermore

f) Section 56, as established by Subsection (10) of Section 31 of this Act.

(4) Section 70/A of the VMIFA - enacted by Subsection (3) of Section 34 of this Act - shall apply to proceedings opened after the time of these provisions entering into force.

(5) Section 215/A of the CIFE - enacted by Subsection (8) of Section 35 of this Act - shall apply to proceedings opened after the time of these provisions entering into force.

(6) Section 117 of the Pension Act - enacted by Subsection (3) of Section 36 of this Act - shall apply to proceedings opened after the time of these provisions entering into force.

(7) Section 45/A of the WMA - enacted by Subsection (4) of Section 38 of this Act - shall apply to proceedings opened after the time of these provisions entering into force.

(8) Section 4 of the BABA - as established by Subsection (2) of Section 40 of this Act - shall apply to proceedings opened after the time of these provisions entering into force.

(9) The following provisions of the ISSA shall apply to proceedings opened after the time of these provisions entering into force:

a) Section 14/B, enacted by Subsection (8) of Section 41 of this Act;

b) Section 16/A, as established by Subsection (9) of Section 41 of this Act;

c) Subsection (1) of Section 16/B, as established by Subsection (10) of Section 41 of this Act;

d) Subsections (1) and (4) of Section 16/C, as established by Subsections (11) and (12) of Section 41 of this Act;

e) Paragraph d) of Subsection (1) of Section 16/D, as established by Subsection (13) of Section 41 of this Act;

f) Subsection (5) of Section 16/D, as established by Subsection (14) of Section 41 of this Act, furthermore

g) Subsection (1) of Section 16/F, as established by Subsection (16) of Section 41 of this Act.

(10) The following provisions of the CMA shall apply to proceedings opened after the time of these provisions entering into force:

a) Subsections (5) and (6) of Section 35, as established by Subsection (1) of Section 42 of this Act;

b) Subsection (6) of Section 38, as established by Subsection (3) of Section 42 of this Act;

c) Subsection (3) of Section 293, as established by Subsection (5) of Section 42 of this Act, furthermore

d) Section 406/A, enacted by Subsection (6) of Section 42 of this Act.

(11) The following provisions of the PVA shall apply to proceedings opened after the time of these provisions entering into force:

a) Section 23/A, enacted by Subsection (4) of Section 43 of this Act;

b) Section 27, as established by Subsection (5) of Section 43 of this Act; furthermore

c) Subsection (1) of Section 28, as established by Subsection (6) of Section 43 of this Act.

(12) Section 167/A of the Insurance Act - enacted by Subsection (2) of Section 44 of this Act - shall apply to proceedings opened after the time of these provisions entering into force.

(13) The following provisions of the ECA shall apply to proceedings opened after the time of these provisions entering into force:

a) Subsection (6) of Section 21, as established by Subsection (1) of Section 45 of this Act;

b) Subsections (2) and (3) of Section 126, as established by Subsection (2) of Section 45 of this Act; furthermore

c) Paragraph d) of Subsection (4) of Section 126, as established by Subsection (3) of Section 45 of this Act.

(14) Section 12/A of the DMFC - enacted by Subsection (2) of Section 47 of this Act - shall apply to proceedings opened after the time of these provisions entering into force.

(15) Section 9 of the Trade Act - as established by Subsection (4) of Section 48 of this Act - shall apply to proceedings opened after the time of these provisions entering into force.

(16) The following provisions of the EEA shall apply to proceedings opened after the time of these provisions entering into force:

a) Section 57, as established by Subsection (2) of Section 49 of this Act;

b) Subsection (3) of Section 72, as established by Subsection (5) of Section 49 of this Act; furthermore

c) Section 145, as established by Subsection (8) of Section 49 of this Act.

(17) Paragraphs d), e) and i) of Subsection (1) Section 62 of the EEA - as established and enacted by Subsections (3) and (4) of Section 49 of this Act - shall apply to contracts concluded after the time of these provisions entering into force.

(18) The following provisions of the IRA shall apply to proceedings opened after the time of these provisions entering into force:

a) Subsection (1) of Section 177, as established by Subsection (2) of Section 50 of this Act; furthermore

b) Section 179, as established by Subsection (4) of Section 50 of this Act.

Section 54³³

The provisions of this Act:

a) established by Act LVI of 2009 on the Amendments Relating to the Entry Into Force of Act CXI of 2008 on the Amendment of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services and to the Transposition of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on Services in the Internal Market,

b) established by Act CLII of 2010 on the Amendment of Regulations Relating to the Calculation of Time Limits in Calendar Days,

c) established by Act CLVIII of 2010 on the Pénzügyi Szervezetek Állami Felügyelete, shall apply to proceedings opened after the date of entry into force thereof and to reopened cases.

Section 55³⁴

Section 56

(1) This Act serves the purpose of compliance with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council.

(2)³⁵

(3) This Act contains provisions for the implementation of the following legislation of the Communities in connection with the duties and proceedings of the consumer protection authority, the Hungarian Financial Supervisory Authority, the Hungarian Competition Authority and the National Media and Infocommunications Authority.³⁶

³³ Established: by Section 68 of Act LXXVI of 2012. In force: as of 27. 06. 2012.

³⁴ Repealed by Subsection (3) of Section 55 of this Act, effective as of 2. 9. 2008.

³⁵ Repealed by Subsection (2) of Section 55 of this Act, effective as of 2. 9. 2008.

³⁶ Established: by paragraph (30) Section 41 of Act LXXXII of 2010. In force: as of 11. 08. 2010.

a) Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, Article 4(1), Article 4(6) e), and Point 16 of the Annex [Subsection (3) of Section 27, Subsection (1) of Section 28, Subsection (20) of Section 30, Subsection (1) of Section 31, Subsection (16) of Section 41];

b) Commission Decision 2007/76/EC of 22 December 2006 implementing Regulation (EC) No. 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance [Subsection (2) of Section 28];

c) Commission Decision 2008/282/EC of 17 March 2008 amending Decision 2007/76/EC implementing Regulation (EC) No. 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance [Subsection (2) of Section 28].

Schedule to Act XLVII of 2008

Unfair Commercial Practices

1. Claiming to be a signatory to a code of conduct when the business entity is not.
2. Claiming that a code of conduct has an endorsement from a public or other body, or administrative authority which it does not have.
3. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorization.
4. Claiming - whether in itself by way of presentation of the product in the commercial communication - that a business entity (including his commercial practices) or a product has been approved, endorsed or authorized by a public or other body, or administrative authority when he/it has not or making such a claim without complying with the terms of the approval, endorsement or authorization.
5. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).
6. Making an invitation to purchase products at a specified price and then:
 - a) refusing to show the advertised item to consumers;
 - b) refusing to take orders for it or deliver it within a reasonable time; or
 - c) demonstrating a defective sample of it,with the intention of promoting a different product (bait and switch).
7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.
8. Undertaking to provide after-sales service to consumers with whom the business entity has communicated prior to a transaction in a language which is not an official language of the Member State where the business entity is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

9. Stating or otherwise creating the impression - whether in itself by way of presentation of the product in the commercial communication - that a product can legally be sold when it cannot.

10. Presenting rights given to consumers in law as a distinctive feature of the business entity's offer.

11. Using editorial content in the printed or electronic media to promote the sale or other form of use of a product where a business entity has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).

12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.

13. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products.

15. Claiming that the business entity is about to cease trading or move premises when he is not.

16. Claiming that products are able to facilitate winning in games of chance.

17. Falsely claiming that a product is able to cure illnesses, dysfunction or malformations.

18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favorable than normal market conditions.

19. Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent.

20. Describing a product as "gratis", "free", "without charge" or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

21. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.

22. Falsely claiming or creating the impression that the business entity is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.

23. Creating the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.

24. Creating the impression that the consumer cannot leave the premises until a contract is formed.

25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return.

26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media or equivalent means of communication, except in circumstances and to the extent justified to enforce a contractual obligation.

27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.

28.³⁷ Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.

29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the business entity, but not solicited by the consumer except where the product is a substitute supplied in conformity with Article 7(3) of Directive 97/7/EC (inertia selling).

30. Explicitly informing a consumer that if he does not buy the product or service, the business entity's job or livelihood will be in jeopardy.

31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either there is no prize or other equivalent benefit, or taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

³⁷ Amended: by Section 404 of Act LVI of 2009. In force: as of 1. 10. 2009. The change does not effect the English version.