

# EU Consumer Law Acquis Compendium

## Legislation

Germany (DE) Nr. 8 EN



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### Full name and/or number of the statute (in original language):

Unterlassungsklagengesetz (UKlaG)

### Translation of the name:

Injunctions Act

### Reference in Official Journal (if appropriate):

BGBl. I 2001, 3138

### Date of coming into force:

01.01.2002

### Subsequent amendments:

BGBl. I 2004, 3102

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### Text:

Part 1 Rights in relation to infringements of consumer law and other infringements

§ 1 Right to require refrainment from use and withdrawal of recommendation of standard contract terms

Those who use provisions which are invalid under §§ 307 to 309 of the Civil Code in standard contract terms or who recommend such provisions for commercial use may be required to refrain from using such terms and to withdraw any recommendation made.

§ 2 Right to require refrainment from practices infringing consumer protection legislation

(1) <sup>1</sup>In the interests of consumer protection, those who infringe provisions serving to protect consumers (consumer protection laws) in a manner other than by use or recommendation of standard contract terms may be required to refrain from doing so. <sup>2</sup>If the infringements are committed by an employee or agent in a business, this right can also be asserted against the owner of the business.

(2) Consumer protection laws for the purposes of this provision are:

the provisions of the Civil Code applying to sales of consumer goods, doorstep selling, distance selling contracts, time-share contracts, travel contracts, consumer loan contracts and to financial accommodation arrangements, instalment supply contracts and loan brokerage contracts between a businessperson and a consumer,

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the provisions transposing Articles 5, 10 and 11 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce"), OJ L 178, 17.7.2000, p. 1),

the Distance Learning Protection Act,

the provisions of Federal and *Land* law transposing Articles 10 to 21 of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 298, 17.10.1989, p. 23) as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 202, 30.7.1997, p. 60),

the pertinent provisions of the Medicines Act and Article 1 §§ 3 to 13 of the Medical Advertising Act,

§ 23 of the Investment Companies Act and §§ 11 and 15h of the Foreign Investment Act.

(3) An action cannot be brought if, in view of all the circumstances, it is abusive, and in particular if its primary purpose is to create a claim for legal expenses or costs against the infringing party.

§ 3 Eligible bodies

(1) <sup>1</sup>The following shall have the right to require refrainment and withdrawal as mentioned in §§ 1 and 2:

qualified entities which demonstrate that they are inscribed in the current version of the list of qualified entities as per § 4 or in the list of the Commission of the European Communities as per Article 4 of Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests (OJ L 166, 11.6.1998, p. 51),

associations with legal personality for the promotion of commercial interests, insofar as their membership includes a considerable number of businesses marketing goods or commercial services of the same or a similar type on the same market, insofar as their staffing, material and financial resources enable them actually to perform the interest promotion functions laid down in their statutes, and, in the case of actions under § 2, insofar as the right asserted relates to conduct liable to impair competition significantly on this market, and

the Chambers of Trade and Industry or the Chambers of Crafts and Labour.

<sup>2</sup>The right of action may be assigned only to bodies within the meaning of sentence 1.

(2) The entities mentioned in subsection 1(1) may not seek injunctions requiring refrainment and withdrawal under § 1 where standard contract terms are applied in relations with a

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businessperson (§ 14 of the Civil Code) or if they are recommended solely for use in relations between businesspersons.

### § 4 Qualified entities

(1) <sup>1</sup>The Federal Office of Administration shall keep a list of qualified entities. <sup>2</sup>This list shall be published in the Federal Gazette [*Bundesanzeiger*] as at 1 January of each year and sent to the Commission of the European Communities with a reference to Article 4(2) of Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests (OJ L 166, 11.6.1998, p. 51).

(2) <sup>1</sup>Associations with legal personality whose functions as laid down in their statutes include promoting consumers' interests by education and advice on a non-commercial and non-temporary basis shall be inscribed on request in the list if their membership includes associations active in this field or at least 75 natural persons, if they have been in existence for at least one year and if their previous activity affords assurance that they perform their functions correctly. <sup>2</sup>There shall be an irrefragable presumption that consumer centres and other consumer associations supported by public funding satisfy these requirements. <sup>3</sup>The entry in the list shall indicate the name, address, court of registration, registration number and statutory purpose. <sup>4</sup>It shall be cancelled with future effect if

the association so requests or

the requirements for inscription were not or are no longer satisfied.

<sup>5</sup>If there are factual grounds to believe that the inscription should be withdrawn or cancelled in accordance with sentence 4, the Federal Office of Administration shall order its suspension for a specific period of not more than three months. <sup>6</sup>Where sentence 5 applies, objections and actions for annulment shall have no suspensive effect.

(3) <sup>1</sup>Decisions on inscription shall be made by means of a notice to be served on the applicant. <sup>2</sup>On request, the Federal Office of Administration shall issue associations with a certification that they are inscribed in the list. <sup>3</sup>On request, it shall certify to third parties which have a legitimate interest that an association's inscription in the list has been cancelled.

(4) If, in the course of legal proceedings, founded doubts are raised as to whether a listed entity satisfies the requirements of subsection 2, the court may ask the Federal Office of Administration to check the inscription and suspend proceedings until that office has reached a decision.

(5) In performing the function regulated by this provision, the Federal Office of Administration shall be subject to the technical supervision of the Federal Ministry of Justice.

(6) The Federal Ministry of Justice is empowered to regulate, by statutory order not subject to approval by the *Bundesrat*, the details of the inscription procedure and in particular the enquiries necessary to check that the inscription requirements are satisfied, and the details of how the list is to be kept.

### Part 2 Procedural provisions

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### Subpart 1 – General provisions

#### § 5 Application of the Code of Civil Procedure and other provisions

The provisions of the Code of Civil Procedure and §§ 23a, 23b and 25 of the Unfair Competition Act shall apply to the procedure unless otherwise provided by this Act.

#### § 6 Competence

(1) <sup>1</sup>The Regional Court in whose district the defendant has his place of business or, failing that, his domicile shall have sole competence for actions under this Act. <sup>2</sup>If the defendant has neither a place of business nor a domicile in Germany, the court at the place of stay in Germany shall be competent or, failing that, the court in whose district the provisions of standard contract terms that are void under §§ 307 to 309 of the Civil Code were used or infringements of consumer protection laws committed.

(2) <sup>1</sup>In the interests of efficient process or speedier litigation, the *Land* governments are empowered to assign, by statutory order, competence for the districts of several Regional Courts as regards cases under this Act to a single Regional Court. <sup>2</sup>The *Land* governments may devolve this power to the *Land* justice departments by statutory order.

(3) The foregoing subsections do not apply to actions concerning a right of the type described in § 13.

#### § 7 Authorisation to publish

<sup>1</sup>If the application is upheld, the applicant may, on request, be authorised to publish the operative part of the judgment, identifying the defendant against whom judgment was given, at the defendant's expense in the Federal Gazette and otherwise at his own expense. <sup>2</sup>The court may set a time limit on this authorisation.

### Subpart 2 – Special provisions for actions under § 1

#### § 8 Application and hearing

(1) In actions under § 1, the application must contain, *inter alia*:

the wording of the standard contract term provisions to which objection is made,

identification of the type of transaction for which objection is made to the provisions.

(2) Before ruling on an action under § 1, the court shall hear:

the competent insurance regulator, if the action relates to provisions in general terms of insurance, or

the Federal Banking Supervisory Office, if the action relates to provisions in standard contract terms which have to be approved by that Office under the terms of the Building and Loan Associations Act, the Investment Companies Act, the Mortgage Bank Act or the Ship

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Mortgage Bank Act.

§ 9 Particular features of the operative part of the judgment

If the court upholds an application under § 1, the operative part of the judgment shall contain, *inter alia*:

the wording of the standard contract term provisions to which objection was made,

identification of the type of transaction for which the standard contract term provisions to which the action relates may not be used,

an injunction to refrain from using standard contract term provisions having the same content,

where the judgment requires a recommendation to be withdrawn, an injunction requiring the judgment to be made known in the same way as the recommendation.

§ 10 Plea of divergent decision

The user of a provision who has been forbidden to use it may plead by means of an action under § 767 of the Code of Civil Procedures that a decision has subsequently been made by the Federal Court of Justice or the Common Senate of the Supreme Courts of Justice which does not prohibit the use of this provision for the same type of transaction and that enforcement of the judgment against him would cause unreasonable harm to his business.

§ 11 Effects of the judgment

<sup>1</sup>If the user against whom judgment has been given fails to comply with an injunction based on § 1, the provision in the standard contract terms is to be regarded as void insofar as the party concerned invokes the effect of the injunction. <sup>2</sup>However, this party cannot invoke the effect of the injunction if the user against whom judgment has been given could contest the judgment under § 10.

Subpart 3 – Special provisions for actions under § 2

§ 12 Mediation Board

§ 27a of the Unfair Competition Act and the delegation of powers it contains apply *mutatis mutandis* to actions under § 2.

Part 3 – Information for injunction proceedings

§ 13 Right of eligible bodies to information

(1) Any party which by way of business provides postal, telecommunications, television or media services or contributes to the provision of such services shall, on request by the bodies and fair trading associations eligible under § 3(1)(1 and 3), provide them with the name and address for service of a party involved in postal, telecommunications, television or me-

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dia operations if the body or association declares in writing that this information

is necessary in order to assert a right under § 1 or § 2 and

cannot be obtained elsewhere.

(2) <sup>1</sup>This right obtains only to the extent that the information can be provided only from the records held by the party responsible for providing the information. <sup>2</sup>The information may not be refused on the grounds that the party on which information is to be provided does not give its consent.

(3) Fair trading associations must, on request by another body eligible under § 3(1) (2), provide it with the information obtained under subsection 1 if it submits a declaration in the form and with the content specified in that subsection.

(4) <sup>1</sup>The party responsible for providing the information may demand appropriate payment for providing it from the eligible body. <sup>2</sup>If an application made under § 1 or § 2 is founded, the party concerned must reimburse this payment to the eligible body.

(5) Fair trading associations are

the Centre for Protection against Unfair Competition and

associations of the type mentioned in § 3(1)(2) whose activities cover various branches and regions.

<sup>2</sup>The associations referred to in sentence 1(2) shall be specified by statutory order of the Federal Ministry of Justice not subject to approval by the *Bundesrat*.

### § 13a Right of other concerned parties to information

<sup>1</sup>Any party who can demand that another refrain from delivering unsolicited goods, providing unsolicited services or sending or otherwise communicating unsolicited advertising shall have the right to information under § 13(1, 2 and 4), his right under general provisions replacing that under § 2. <sup>2</sup>Sentence 1 shall not apply to the extent that a right to information exists under § 13 or § 13(7) of the Unfair Competition Act.

## Part 4 – Handling of customer complaints

### § 14 Customer complaints

(1) <sup>1</sup>In disputes arising from application of §§ 675a to 676g and 676h, sentence 1, of the Civil Code, the parties may have recourse to an arbitration board to be set up at the *Deutsche Bundesbank*, without prejudice to their right to resort to the courts. <sup>2</sup>The *Deutsche Bundesbank* may set up several arbitration boards. <sup>3</sup>It shall determine which of its departments is to accommodate these boards.

(2) <sup>1</sup>The Federal Ministry of Justice shall regulate by statutory order the details of the procedure to be followed by the bodies to be set up under subsection 1, in accordance with the

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following principles:

Even-handed conduct must be ensured by the independence of the entity.

The rules of procedure must be accessible to interested parties.

The parties must be able to submit facts and argument and must receive a fair hearing.

The procedure must be geared to giving effect to the law.

<sup>2</sup>By analogy with § 51 of the Banking Act, the statutory order shall also regulate the duty of credit institutions to contribute to the costs of the procedure.

(3) <sup>1</sup>The Federal Ministry of Justice is empowered, in agreement with the Federal Ministries of Finance and of Economic Affairs and Technology, to transfer the arbitration function mentioned in subsection 1 to one or more suitable private bodies by statutory order approved by the *Bundesrat*, if that function can thus be performed better.

### Part 5 Scope

#### § 15 Exclusion of labour law

This Act shall not apply to labour law.

### Part 6 Transitional provisions

#### § 16 Transitional provision on repeal of the Standard Contract Terms Act

(1) Insofar as cases under the Standard Contract Terms Act as promulgated on 29 June 2000 (BGBl. I 946) are pending on 1 January 2002, they shall be completed in accordance with this Act.

(2) <sup>1</sup>The register of decisions under § 20 of the Standard Contract Terms Act kept by the Federal Cartel Office shall be open for inspection until 31 December 2004 inclusive on the conditions applying until 31 December 2001 inclusive. <sup>2</sup>The decisions recorded in the register shall be deleted twenty years after their inscription in it, and not later than 31 December 2004 inclusive.

(3) Arbitration boards within the meaning of § 14(1) shall include the boards set up on the basis of § 29(1) of the Standard Contract Terms Act applying hitherto.

(4) <sup>1</sup>The list of qualified entities established under § 22a of the Standard Contract Terms Act shall be maintained in accordance with § 4. Associations inscribed by 1 December 2001 inclusive need not comply with the one-year requirement stipulated in § 4(2), sentence 1.