

## Legal Literature

### Legal Literature Details

**Member State:** Germany

**Title:** The development of unfair competition law in the years 2008 until 2010

**Subtitle:**

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**Reference:** Neue Juristische Wochenschrift (NJW) 2010, 3280-3287

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### Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(d\)](#) Unfair Commercial Practices Directive, [Annex I, 5.](#) Unfair Commercial Practices Directive, [Annex I, 11.](#) Unfair Commercial Practices Directive, [Chapter 2, Article 5](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6](#) Unfair Commercial Practices Directive, [Chapter 2, Section 2, Article 8](#) Unfair Commercial Practices Directive, [Chapter 2, Section 2, Article 9](#)

### Headnote

The author gives an overview on the development on unfair competition law in the period from June 2008 until June 2010. He particularly discusses the influence of the UCP Directive to the UWG.

The author notes that the applicability of the general clause in § 3 UWG as well as the entire UWG has been broadened by the new definition "commercial practice" according to § 2 I no. 1 UWG, which derives from the UCP Directive. As a consequence, practices under a contract or after termination of a contract are also covered by the new UWG.

Furthermore, the author states that it is important that the national UWG has to be interpreted in line with the UCP Directive. This is documented by a decision of the EJC that Sec. 4 no. 6 UWG infringes the UCP Directive as the per se prohibition of tie-in offers is stricter than the provisions of the UCP Directive concerning B2C commercial practices and is therefore not admissible due to the full harmonization in this area.

Relating to No. 5 of Annex 1 to § 3 III UWG, courts have decided that a misleading advertising in regard to the ability to supply is not prevented by the fact that the advertiser can supply the same goods but from a different brand, as goods from different brands are not "equivalent" in the sense of this provision.

The author states that an undue influence according to § 4 no. 1 UWG is generally given if an aggressive commercial practice in the sense of article 8 and 9 of the UCP Directive is confirmed.

Moreover, the author comes to the conclusion that the prohibition of concealment of advertising according to § 4 no. 3 UWG corresponds directly to no. 11 of annex 1 to § 3 III UWG and will therefore lose its importance in regard to B2C relationships.

Finally, the author consents that § 4 no. 4 and 5 UWG are in line with the UCP Directive.

### General Note

### Related Cases

No results available