

Methodology for evaluation of cases in the classes in “Unfair competition”



Fanny Koleva, PhD

University of national and world economy,
Sofia, Bulgaria

Unfair competition

- Elective, in Bulgarian and English
- Faculty level – different specialties, Bachelor stage, 3d year
- Lectures – 30 h, **Seminars - 30 h**
- Main purpose – raising arguments/ counter arguments in unfair competition cases
- Practical examples – confusion, misleading, discrediting, comparative advertising, trade secrets, games and awards, combined cases as well



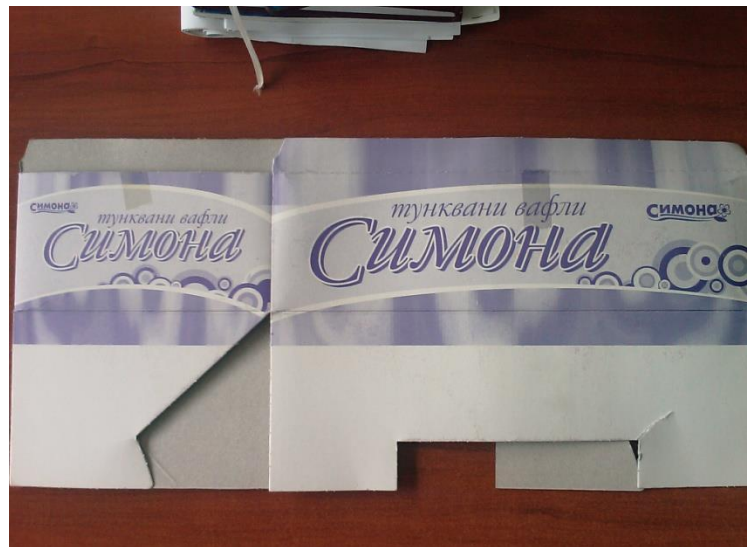
➤ Approach

- Facts&claims
- Discussion:
 - Definition of the relevant market
 - Character of the relations between the parties involved
 - Behaviour, contrary to fair trade
 - Probable negative impact on competitors/consumers
- Vote
- Real decision
- Comments and conclusion



Confusion

- Distinctiveness and reputation of the original indication
- Similarity of indications – visual, phonetic, semantic
- Similarity of goods/ services
- Overall impression of consumer



➤ Confusion?



Misleading

- Objectively correct information?
- Perceptions of consumer...
- Impact on consumer's behaviour

Misleading - example

- Can an exposition be considered traditional if it's organised by a party for a first time?
- Can an exposition be considered organised under the aegis of the mayor and the district governor if only informing letters have been sent to them?
- Is it more or less problematic if there is another party, organising it regularly?
- Does the situation change if the names of the two expositions are similar? – Veliko Turnovo Expo and Expo Veliko Turnovo
- Does the situation change if one of the parties traditionally uses the two names simultaneously?

Discrediting

- Is the information objectively correct?
- Is it properly presented?
- Can the information harm the reputation of competitor?

Discrediting - example

- Is it discrediting if such a note stays on the shop window of an entrepreneur?

“THE ORIGINAL, BUT NOT THE FAKE▶”,



- While ▼ shows the own products, and ▶ - the door of the competitor?
- Obvious?
- Appeal followed...

Comparative advertising

- Is there comparison with a competitive product?
- Does it have a harmful effect upon the competitor?
- Or it free rides on competitor's reputation?

Comparative advertising - example

- Is it unfair if the competitor says:
“**My product is the best**” on a billboard together with
“**The price [of my competitor] is misleading – be careful for you health!**” in a series of paid publications in the press, describing how to differentiate the good from the bad product
- The case is about food
- And the information is not true

Trade secrets

- Does the information fulfill the requirements for protection as a trade secret?
 - Is it's scope properly defined as such?
 - Are reasonable measures for its protection at hand?
- Is it illegally learned by the competitor?
- Is it unlawfully used and/or disclosed by the competitor?

Trade secrets - example

- Is it problematic if the competitor has signed a contract with the company and learned the information in this way?
- And in this contract the information is not specifically defined?
- Is the information trade secret if it's a part of a catalogue?
- What if the catalogue is published by another party?
- Does the situation change if the information has not been used by the accused competitor?

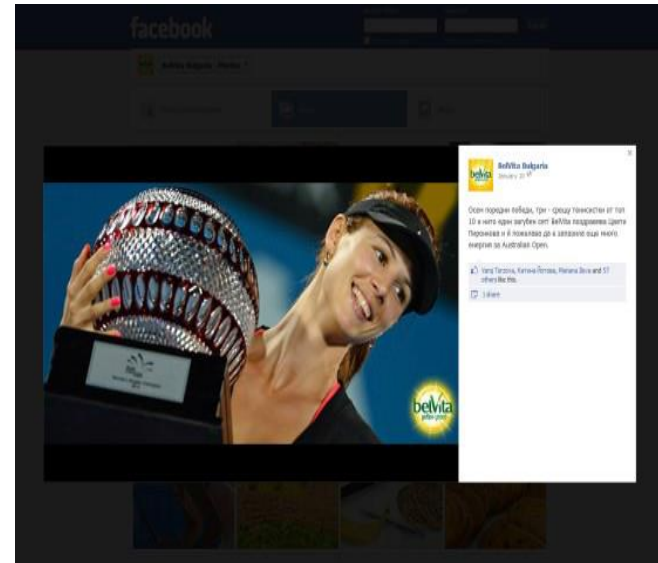
Unfair attraction of customers through promise of eventual awards

- If purchase is necessary as a condition to get the award?
- If the value of award is substantially higher than the value of purchase?

Unfair attraction of customers - example

- Is it unfair if a product is advertised in the following way?
“Watch the MTV awards live in New York!”
- It's about coffee
- And the foil under the lid of the box must be sent to the organisers
- In order to get a free ticket for the MTV show
- Moreover, the airplane tickets, the hotel, etc. are paid by the winners

Even cases of merchandising are at hand...



Findings

- Diversity is important
- Being non-evident – crucial
- The known background helps a lot
- But going “beyond the game” – much harder

On the other hand

- The palpability is very often “on the surface” only
- If the perspective of another legislative approach is considered, it becomes even more complicated
- Team work is easier

Future?

- Other acts of unfair competition
- Cases of a different background
- Solving the “free rider’s issue“

Thank you for your kind attention!