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Rethinking of Consumer's Litigation in Unfair Competition

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Rethinking of Consumer's Litigation in Unfair Competition

Cover Page Footnote

Judge Eyad Ayed Alsamhan Judge in Jordan, Doctoral Scholar- University of Pécs- Hungary

Rethinking of Consumer's Litigation in Unfair Competition

Judge. Eyad Ayed Alsamhan •

Abstract:

This Article looks at unfair competition lawsuits from the perspective of litigation, rather than from the subjective study of this field. This study presents a contribution to the field of consumer services law in unfair competition acts by involving consumers in this lawsuit. The consumer's interest is prioritized and qualifies consumers to act as a litigant in unfair competition acts, which traditionally were only concerns held by the competitor's undertaking trade. This study exhibits European practice and elaborates on their application in Jordan, which serves as an example of countries who lack national consumer's protection legislation.

Table of Abbreviations

(B2C)	Business-to-consumer relationship
(CLJ)	Cambridge Law Journal
(EC)	European Commission
(ECJ)	European Court of Justice
(UCPD)	European directive 2005/29/EC on unfair commercial practices
(MCAD)	Misleading and Comparative Advertising Directive''
(OJ)	Official Journal of the European Communities
(MIT)	The Jordan Ministry of Industry and Trade
(JUC Law)	The Jordanian Unfair Competition law
(PC)	The Paris Convention for the protection of industrial property
(U. Chi. Legal F.)	University of Chicago Legal Forum

0.1 Introduction

There are two sensors for protecting the market in any country; the sensor of consumer protection and the sensor of the competition protection. It is generally accepted that consumers are protected by law in many countries, and it is quite challenging for producers to skip the consumers' safety and protection rules there. However; this goes only for the countries that have special legislations to protect their consumers. Yet, many countries, developing

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countries, lack consumer protection legislations so far. This make the competition is the only sensor for abusing rules of the market.

Leaving consumer without protection in a market is like leaving the sheep in the field without a guard, protecting consumers is needed to conserve the balance in the market, so it is so important to find some rules to protect consumers. Luckily, it is possible to exploit the rules of competition to complete this gap. This study uses the rule of honest competition to protect consumers, it only deals with consumer unfair competition litigation as claimants; it is ostensibly concerned only with B2C relationships rather than business-to-business ones. Rethinking of Consumer's Litigation in Unfair Competition, is an open-minded way of legal thinking to use "Unfair competition acts" in order to serve the interests of consumers.

The expression 'act' is used in addition to 'practice' in order to clarify that not only an 'act' in the strict sense, but also the behaviour in an omission to act can constitute an 'act of unfair competition. For example, the failure to correct or supplement information concerning a product tested and then subsequently published in a consumer magazine, thereby giving a wrong impression of the quality of the product offered on the market, or the failure to give sufficient information concerning the correct operation of a product or the possible side-effects of a product are considered acts of unfair competition.

This study is so essential for the case of Jordan, as many other countries, because it has no legislation as of now governing consumer protection, so unfair competition could be heavily tested in the field of protecting Jordanian consumers. This study will discuss the modern framework of the litigants of unfair competition acts through testing the suitability of its parties as litigants and examining the consequences of this litigation. Unlike the traditional approach of analysing the legal justification of unfair competition acts, this study brings consumers and public legal persons as parties of such litigation to protect consumers.

This way of protecting consumers by unfair competition laws is going to be the most important issue in the field of legal protection in the coming few years, especially in the case of countries where unfair competition law is the only set of private rules that can protect consumers and therefore the economy.

The aim of this study is to tackle the theory that might justify unfair competition rules protecting consumers. Its purpose is to answer some

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fundamental legal questions such as: How it is possible to protect consumers through unfair competition law? How consumers can be the new litigants in unfair competition litigations? To what extent is it possible to bring a consumer as a litigant in a Jordanian unfair competition lawsuit?

This Article adapts the comparative methodology that aims to make comparisons across different legal approaches for protecting consumers. It shows the process of comparing the European approach in protecting consumers with approaches in other countries that have no clear methodology of protecting consumers. This in turn aims to discover the ability for litigation for consumers in unfair competition lawsuit.

As a result, this Study will undertake the framework of unfair competition litigation, in five main titles: unfair competition from an international perspective, Consumer as an element of the market, protecting consumers from a modern perspective, enforcement and applications in Jordan .Local examples from Jordan and the European Union will be provided to apply the theory of protecting consumers by unfair competition lawsuits.

1. Unfair Competition from an International Perspective

When instances of unfair competition emerged, some continental European countries attempted to incorporate its written civil law in the existing tort law system.⁽¹⁾ On the other hand, protection in the common law countries was restricted to some narrowly defined torts, in particular 'passing off'.⁽²⁾ Their basic common principle was that traders may not sell their goods under false presences, either by deceptively passing them off as the goods of other traders so as to take unfair advantage of their reputation, or by using a trade sign the same as, or confusingly similar to, a registered trade mark.⁽³⁾ However, unfair competition practices are not exclusive to competitors. In fact, there are many parties that may be involved, for instance, producers, merchants, sub-merchants, some competitors, and even whole communities. So far, the European Commission (EC) has not successfully achieved full coherent harmonization of rules.⁽⁴⁾ The EC, in its proposal to the UCPD in the *Green*

(1) Reto Hilty and Frauke Henning-Bodewig, *Law against unfair competition* (Springer 2007) 1

(2) Christopher Wadlow, 'The emergent European law of unfair competition and its consumer law origins' (2012) I.P.Q. 2 See also, ipid.

(3) *ibid.*

(4) Hilty and Henning-Bodewig (n 1)



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Paper on Consumer Protection points out that for the development of a fully functioning consumer internal market, a greater degree of harmonization of the rules that regulate B2C commercial practices is needed.⁽⁵⁾

Numerous authorities expressly emphasize that consumers should be protected by unfair competition law.⁽⁶⁾ This expands the parties of unfair litigation to cover consumers as a plaintiff litigant of unfair competition lawsuits following international practices. It is well represented in the case law, perhaps most notably in the expression of involving consumers in unfair competition litigation by Mr Justice Swager in *Gregory v Albertson's, Inc*;⁽⁷⁾ in the earlier Court of Appeal decision in *Chevrolet v General Motors Acceptance Corp*.⁽⁸⁾ And in the later Court of Appeal decision in *Camacho v Auto Club of Southern California*.⁽⁹⁾ Mr Justice Swager said that: 'The unfair competition law (Bus. & Prof. Code, § 17200 et seq.) was "one of the so-called 'little FTC Acts' of the 1930's, enacted by many states in the wake of amendments to the Federal Trade Commission Act enlarging the commission's regulatory jurisdiction to include unfair business practices that harmed, not merely the interests of business competitors, but of the general public as well." (Rubin v. Green (1993) 4 Cal.4th 1187, 1200, 17 Cal.Rptr.2d 828, 847 P.2d 1044; Bank of the West v. Superior Court (1992) 2 Cal.4th 1254, 1263-1264, 10 Cal.Rptr.2d 538, 833 P.2d 545.) The definition of unfair competition in section 17200 "demonstrates a clear design to protect consumers as well as competitors by its final clause, permitting inter alia, any member of the public to sue on his own behalf or on behalf of the public generally." (Barquis v. Merchants Collection Assn. (1972) 7 Cal.3d 94, 110, 101 Cal. Rptr. 745, 496 P.2d 817)⁽¹⁰⁾ Furthermore, Jordan's consumer protection has still not been completely

(5) Rogier De Vrey, *Towards a European Unfair Competition Law: A Clash between Legal Families* (MARTINUS NIJHOFF 2006) 28.

(6) Thomas Möllers, 'Enforcement of Unfair Competition Law by Notice of Violation, Rights of Consumers and Public Authorities – Comparative Evaluation of the German Status Quo' in Wolrad Adelman and others (eds), *Patents and Technological Progress in a Globalized World* (Springer 2007), 424.

(7) Compare *Gregory v Albertson's, Inc*, 104 Cal App 4th 845, 853-54 (2002)

(8) *Chevrolet v General Motors Acceptance Corp*, 72 Cal App 4th 861, 886 (1999)

(9) *Camacho v Auto Club of Southern California*, 142 Cal App 4th 1394, 1403-04 (2006)

(10) FINDLAW <

<http://caselaw.findlaw.com/ca-court-of-appeal/1211324.html#sthash.IGBz3KQI.dpuf>>
accessed 16 March 2017

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established compared to its advanced competition laws.⁽¹¹⁾ Moreover, similar countries to Jordan suffer from a serious lack of protecting consumers because of the lack of special legislation for consumer protection. So far, there is no governmental body responsible for consumer protection issues in Jordan.⁽¹²⁾

Therefore, unfair competition law is concerned with fair play in commerce. It is generally regarded *inter alia* as necessary, therefore, together with antitrust law, unfair competition law is used in order to steer competition along an orderly course of trade and to promote an efficient market system that serves the interests of all participants. Antitrust law concerns competition as well as anti-monopoly rules.⁽¹³⁾ Antitrust law introduces a prohibition of abuse of economic dominance, i.e. the law relating to restrictive practices, monopolies and mergers,⁽¹⁴⁾ and the law of unfair competition relates to a wide range of trade practices, e.g., deceptive advertising, protection of trademarks, trade names and trade secrets, counterfeit of non-protected products, concepts and configurations, interference with contractual relationships of all kinds (distribution systems, client or labor relations), and disparagement of competitors.⁽¹⁵⁾

Unfair competition law, as a separate area of law, presents a similar picture for forming rules to control the market; it seems to have a broad consensus among world states that fair trading is to be considered as part of the legal system.⁽¹⁶⁾

The market has a set of rules concerning competition and presenting products and intellectual property law like trademarks, geographical indications, industrial design, or trade secret rules that concern both products and competition, but competition law and consumer law are connected to a

(11) Jordan Competition law No 33, Al-Jarida Al-Rasmiya [Official Gazette], No. 4673 at 4157 (September 1,2004) (Jordan) and Jordanian Anti-dumping and subsidizing Order, No. 26/2003, Al-Jarida Al-Rasmiya[Official Gazette], No. 4587 at 952 (March 2,2003) (Jordan)

(12) Hetham Abu Karaky, 'Competition Policy and Consumer Protection Policy in Jordan' (2010) 29 Penn St. Int'l L. Rev335.

(13) ipid

(14) Haitham A. Haloush, 'Legal Framework of Unfair Competition In Jordan: Scope of Application and Legal Protection' II JEAIL 52ff

(15) ibid 53.

(16) Hans Micklitz, 'The General Clause on Unfair Practices', in G. Howells, Hans Micklitz, Wilhelmsson (eds) *European Fair Trading Law: The Unfair Commercial Practices Directive* (Aldershot: Ashgate, 2006)83.

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wider scope leading to outline the competition policy.⁽¹⁷⁾ Therefore, unfair competition law is an essential tool to protect the market and the whole community, including competitors and consumers.⁽¹⁸⁾ Initially, unfair competition law focused exclusively on protecting competitors while consumers were only of secondary concern.⁽¹⁹⁾ Then, the European directive 2005/29/EC on unfair commercial practices (UCPD) did exactly the opposite: it is now concerned with the protection of consumers in the so called business-to-consumer relationship (B2C) and the protection of competitors.⁽²⁰⁾ For example, Articles 6-8 of UCPD takes care of the average consumers more than the criteria to measure the existence of misleading or other unfair competitions acts. This is why Christopher Wadlow regards unfair competition law as more important than intellectual property laws in protecting firstly consumers and then competitors.⁽²¹⁾

When a trader practices unfair competition against consumers, the loss of a single consumer is not comparable with the cumulative benefits that the trader enjoys from gathering the losses of many consumers. As long as the trader enjoys cumulative enrichment, litigation at the same level for collective consumers is needed. Therefore, steps are being confidently taken toward granting protection for collective consumers against unfair competition practices through the law that used to protect only competitors⁽²²⁾ since consumers, as an interested party, are the main victims of such unfair practices.⁽²³⁾

The EU now has two substantial directives aimed at harmonising unfair competition legislation⁽²⁴⁾: The UCPD and the Misleading and Comparative

(17) Malek Radeideh, *In Fair Trading in EC Law Groningen* (Europa Law Publishing 2005)

(18) Radovan Vukadinović, 'Some Critical Remarks Concerning the Act on the Protection of Competition of the Republic of Serbia' in World Adelman and others (eds), *Patents and Technological Progress in a Globalized World* (Springer 2007) 728.

(19) De Vrey (n 5) 12.

(20) Möllers (n 6) 416

(21) Wadlow (n 2) 1

(22) Reilly Nathan, 'the role of traders in the enforcement of the Unfair Commercial Practices Directive: a new unfair competition law for Ireland' (2009) 31 D.U.L.J 108.

(23) Matthew Hilton, *The Death of a consumer society: Transactions of the Royal Historical Society* (6th Series, Vol 18 Springer 2008) 211. See also, Steven Atlee and others, 'California Prop. 64 Reins in Victimless Unfair Competition Consumer Law suits. *Latham & Watkins* (California, November 18, 2004)

<http://www.latham.com/upload/pubContent/pdf/pub1122_1.pdf> accessed on Nov 3, 2015.

(24) Richard Arnold, 'English Unfair Competition Law' (2013) 44 IIC 67

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Advertising Directive.⁽²⁵⁾

However, a global harmonisation is even more difficult to achieve than European harmonisation.⁽²⁶⁾ For this reason, the few international agreements concluded so far are the most important: the Paris Convention on the Protection of Industrial Property (PC)⁽²⁷⁾ and the Trade Related Aspects of Intellectual Property Rights agreement (TRIPS).⁽²⁸⁾

Accordingly, the PC member states are obliged to provide for protection against unfair competition. 'The countries of the Union are bound to assure nationals of such countries effective protection against unfair competition.'⁽²⁹⁾

The same obligation exists under Article 2 of the TRIPS agreement where, '1. In respect of Parts II, III and IV of this agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).

This stance has not been changed by Article 2(2) of TRIPS which requires members to comply with *inter alia* Article 10^{bis} of the PC in respect of Parts II–IV of TRIP. '2. Nothing in Parts I to IV of this agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.'

According to Article 2 of the TRIPS agreement, WTO members are obliged to comply with Article 10^{bis} of the PC. TRIPS regulates specific cases that in certain member countries are regarded as part of unfair competition law or at least have a close relationship with it. These are the protection of trade secrets and the protection of geographical indications of origin. Within two Articles: Article 22 (Protection of Geographical Indications) and Article 39 (Protection of Trade Secrets). According to Article 22 (2) of the TRIPS agreement, the member states are required to protect geographical indications of origin against misleading designations or generally anything that 'constitutes an act

(25) Council Directive 2006/114/EC of 12 December 2006 the Misleading and Comparative Advertising Directive (MCAD) [2006] OJ L 376/21

(26) Rogier De Vrey (n 5) 27ff

(27) The Paris Convention for the protection of industrial property of 20 March 1883 (PC) (as last revised at Stockholm in 1967). Adopting Article 10^{bis} at the Brussels Conferences in 1897 and 1900.

(28) The agreement establishing the World Trade Organisation of 15 April 1994. Annex 1C

(29) The PC Article 10^{bis}(1)

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of unfair competition within the meaning of Article 10^{bis} of the PC.' The same applies to the protection of undisclosed information in Article 39 (1).

In addition to establishing the basic protection against unfair competition, Article 10^{bis}(2) serves at the same time as a general definition of the acts of unfair competition. 'Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.'⁽³⁰⁾

The decisive criterion is that the act is 'contrary to honest practices.' This notion will have to be interpreted by the judicial authorities in the country concerned.⁽³¹⁾ However, in cases of competition between enterprises of different countries, the notion should not be limited to honest practices in the country where an act of unfair competition is taking place; conceptions of honest practices that are established in international trade should be taken into account.⁽³²⁾

The term 'industrial or commercial activities' in the said Article should be understood in the broad sense that covers not only the activities of enterprises buying and selling products or services, but also the activities of professionals such as lawyers, medical doctors in private practice and other such persons. Therefore, for the purposes of unfair competition, it does not matter whether the activities of a person or enterprise are for profit or not.⁽³³⁾

TRIPS does not mention unfair competition law. Accordingly, there is no clear Article in TRIPS that directly matches with Article 10^{bis} of the PC except what is mentioned above. Unfair competition law is not regulated in Part II to IV of the TRIPS agreement, which contains the materials regulated. Taken literally, the general obligation to comply with the PC only applies to the matters regulated in TRIPS and part II to IV of TRIPS do not include unfair competition law as such, but only the special aspects of geographical indications of origin and business secrets. On the other hand, the Appellate Body of the WIPO has decided that at least in respect to trade names Article 2

(30) The PC Article 10^{bis}(2)

(31) WIPO MODEL PROVISIONS ON PROTECTION AGAINST UNFAIR COMPETITION, <<http://www.wipo.int/cgi-bin/koha/opac-detail.pl?bib=22617>> accessed on Nov 15, 2015 [1.02] 6

(32) *ibid*

(33) *ibid* [1.05] 8

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must be interpreted widely.⁽³⁴⁾ Furthermore, in the opinion of the European Court of Justice,⁽³⁵⁾ the member states are at liberty to construe the concept of 'intellectual property', not defined in TRIPS, such that it also includes the possibility of actions under unfair competition law to prevent imitation (e.g. of a design). However, this only applies to cases such as slavish imitation, parasitic exploitation of a competitor's commercial achievements, [...], which in certain countries can lead to the same results as IP rights.⁽³⁶⁾

As a result, most countries provide a certain level of protection against unfair competition practices, which still need more improvement to protect consumers. Consequently, what are the reasons for protecting consumers with unfair competition rules?

2. Consumer as an Element of the Market

The term 'consumer' is wider in meaning than 'customer' or 'client'; consumers are not only customers but also other customers of different merchants, including entrepreneurs who acquire means of production for the purpose of their own private activity.⁽³⁷⁾ Consumers also include collective consumers that acquire goods or services in order to carry out their non-commercial functions as set in their Articles of association or the law (e.g. state authorities, educational institutions, public hospitals and charitable associations).⁽³⁸⁾

The concept of the customer is found in Article 38 of the Jordan commercial law as an incorporeal element for the market.⁽³⁹⁾ Thus, jurisprudence defines customers as the financial value of the relation between a market and its client, and it is the most essential element of the commercial foundation.⁽⁴⁰⁾

(34) Omnibus Appropriations Act of 1998 of August 6, 2001 and February 22, 2002. Panel Report, US-Section 211

(35) Joined cases C-300/98 and C-392/98 *Dior and Assco* [2000] ECR I-11307

(36) Hilty and Henning-Bodewig (n 1) 59

(37) UCPD Whereas (6)

(38) Ryszard Skubisz and JanuszSzwaja, 'Poland: Unfair Competition Law' in RetoHilty and Frauke Henning-Bodewig(eds),*Law Against Unfair Competition* (Vol 1, Springer 2007) 235

(39) Jordan commercial law No. 12/1966, Al-Jarida Al-Rasmiya[Official Gazette], No. 1910 at 472 (March 30,1966) (Jordan)

(40) Mustafa Taha and Wael Bunduq, *Commercial law principles* (Dar AlfikrAljami'i 2006) 656. See also, Zyadat Ahmad and OmushIbraham, *Alwajiz in Jordanian commercial legislations* (Darwael 1996) 102

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However, in absence of a definition of a consumer in Jordanian legislations, it is possible to rely on the draft of the consumer protection act⁽⁴¹⁾ to cover the definition, whereas the suggested Article 2 of this draft states: ‘a consumer is defined as a person who buys a product for consuming and, for purposes of this law, everyone who gets benefit from the products is considered as a consumer.’⁽⁴²⁾

The common element of these definitions is that consumers consume products and the commercial cycle ends with them. This means that this category of persons cannot be considered as traders at this point, so all legislations regarding competition and commercial transactions are not applicable to them. Thus, they are not protected by unfair competition law as long as they are not competing. However, in some instances like dumping consumers are not concerned with these unfair competition acts as lower costs are in their favour even though the practice is extremely harmful for other traders.

At this point, it is possible to protect consumers by drafting a special legislation for consumers away from market legislations. This forces comparative law systems to draft special law for protecting consumers. For example, the drafting of the Consumer Safety Act 1978 in UK came after more than two hundred years of the consumer revolution in England.⁽⁴³⁾

Thus, the justification for consumers to be a litigant of unfair competition lawsuit will be discussed in the following part.

3. Protecting Consumers from a Modern Perspective

The core objective of consumer protection consists of preventing sellers from increasing sales by being deceitful about their products or by engaging in unfair practices such as unilateral breach of contract or unauthorized billing.⁽⁴⁴⁾ Unfair competition law, at first sight, mentions consumers as an

(41) Still this draft has succeeded to release out of the Parliament. (Petra Nov 28, 2012) <http://petra.gov.jo/Public_News/Nws_NewsDetails.aspx?lang=1&site_id=2&NewsID=101250&Type=P> accessed on Nov 27, 2015.

(42) *ibid* Article 2.

(43) Hilton (n 23) 236

(44) United Nations Conference on Trade and Development, *The benefit of competition policy for consumers* (CCPB IGE 2014) available at:

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element that tests a practice for fairness (e.g. misleading advertising)⁽⁴⁵⁾ or tests if other competitors' products attract clients dishonestly.⁽⁴⁶⁾

Consumers need to be able to take action on their own rather than waiting for the competitors to start the action, especially against some practices of dishonest trade that does not affect the profits of these competitors. To be more specific, some communities are aware of consumer products of a certain description (e.g. halal products),⁽⁴⁷⁾ in which they need to be able to protect their interest against misleading description of the product. In addition, sometimes competitors in a market cooperate together against consumers. The best example is in a cartel agreement where competitors divide regions of the market between them or abstain selling to consumers in order to gain control of the market and force consumers to accept their terms and their pricing. On the other side, most countries consider the action of misleading as unfair competition exclusively against the consumers. The list of these acts, like in most countries, are outlined in Article 10^{bis}(3) of the PC⁽⁴⁸⁾ as follows:

1. All acts of such a nature as to create confusion by any mean whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
2. False allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
3. Indications or allegations of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods.

So these are justified reasons to adopt a perspective where consumers can seek protection against unfair commercial acts without waiting for the other competitors to file a case. This modern perspective of protection is possible to

<http://unctad.org/meetings/en/Contribution/CCPB_IGE2014_RTBenCom_Jordan_en.pdf>

accessed on Nov 19, 2015. 4-5

(45) For example: UCPD Articles 6 (1) and 7 (1); PC Article 10bis (3) and The Consumer Protection from Unfair Trading Regulations 2008 (Protection) Act 1277 Articles 5 (2)(b) and 6(1)

(46) For example: UCPD Articles 6 (1)(b) and 7 (1) (b); PC Article 10bis 3 (1) and The Consumer Protection from Unfair Trading Regulations 2008 (Protection) Act 1277 Articles 21(10)(A) and 5(5) (g)

(47) Muslim consumers avoid products which contains spirit and pork according to their rites.

<<http://www.muslimconsumergroup.com>> accessed on Nov 27, 2015

(48) The same goes for examples of JUC law.

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be applied theoretically in Jordan's classical way of consumer protection and is already practiced in EU example.

3.1 Jordanian Example

The general legal protection for consumers in the Jordanian legal system, before drafting the Unfair Competition and Trade Secrets act in 2000, in the Jordanian Civil Code⁽⁴⁹⁾ said: 'Article 163- Any contract is invalid if it contradicts the public orders and morals[...] 3. Any rules and legislations concerning consumers' interest in special circumstances, or ..., is considered as public order.'

According to this Article, protecting consumers is applied as protecting a normal contractor through controlling the subject matter of the contract. As a result, any subject matter that contradicts consumer protection rules is contradicting public order. Unfortunately, there is no legislation to update these consumer protection rules. Therefore, protecting consumers has not been practiced yet.

However, consumers can be protected under Jordanian Civil Code, specifically through the rules concerning hidden defects of sold products in Articles 512,519, 515,514, and513. There are three conditions for hidden defects of sold products: 1- Old (existing before selling), 2- serious (decreasing the value of the product) and 3- Hidden defect. The hidden defect in a sale contract case gives the buyer the right to return the product and prevent him to demand the cost of the defect.⁽⁵⁰⁾ However, this defect is subject to the special provision of limitation in Article 521 for 6 months unless it was a case of fraud.

In addition, civil protection for consumers against unfair commercial practices is found in the general rules of tort and rules of abusing rights⁽⁵¹⁾:

1. Tort law:

The Jordanian legal system generally sets the right of filing an unfair competition case on rules of tort prescribed in Article 256 of the Jordanian Civil Code provisions.⁽⁵²⁾

(49) Jordan Civil Code No 43/1976, Al-Jarida Al-Rasmiya[Official Gazette], No. 2645 at 2 (Aug 1,1976)

(50) *ibid* Article 513 (1)

(51) Some doctrine justify some practices of unfair competition upon contract, this doctrine was avoided from this study because it is not reasonably possible to justify consumers protection. See Mohammad Ismail, *Jordanian Trade Law* (1st ed, Dar Ammar 1985) 212-213. See also, Zyadat and Omush (n40) 112.

(52) Taha and Bunduq (n 40) 754. See also, Zyadat and Omush (n40) 112ff

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This approach was criticized for basing unfair competition cases upon Article 256 that leads to make any practice, even honest fair competition, as an injurious act because of the harm that occurs.⁽⁵³⁾

2. Abusing rights:

Each merchant has the right to compete with other competitors. Even if this competition causes harm for other competitors, this harm shall not set up responsibility unless it was caused through unacceptable methods in competition.⁽⁵⁴⁾ Thus, abusing the right of competitors shall not be justified according to Article 66 of the Jordan Civil Code which provides:

1. The retaliation imposed over who illegally abused practicing their right
2. Illegal abusing right shall be occurred if:
 - a. The intention of interloping is found
 - b. The interest of the action was illegal.
 - c. The benefit out of the action is not symmetry with the harm
 - d. Exceeding what is acceptable at custom and habit.

The abusing action *per se* is not illegal but the way of practicing it makes it so. For example, it is legal to brand a sign over merchant's products to distinguish his goods and services from other's products; however, it is abusing action when branding this sign in a certain way drives to misleading consumers. Although intention is not a condition for filing an unfair competition lawsuit, intention of interloping makes it stronger to file.

A case in point is one between two competitors which has reached the Jordanian Cassation Court of Justice that applies the general rules of abusing rights. The case was about a sample of goods that appeared as goods from a different origin which impacted on consumers' decisions. The court based its decision about this case upon both Article 256 and 66 of the Jordanian Civil Code even though the unfair competition act existed 6 years earlier.⁽⁵⁵⁾ This proves that using both Articles 66 and 256 can protect consumers and competitors against unfair practices in Jordanian legal system.

Custom and habit in the field of trade provide the proper criteria for

(53) Ismail (n 51) 212

(54) Naim Samaha, *Unfair competition* (1sted, E'z al din 1991) 131. See also, Ismail (n 51) 214

(55) Jordan Cassation Court of Justice: civil 2227/2006 on 18/12/2006 (*Qistas For legal information*)

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determining what fair competition is.⁽⁵⁶⁾ Among the 20-unfair-competition lawsuits that have reached the Jordanian Court of Cassation, there seemed to be no consumer protection evident in these decisions. Consumers are confused about their protection.⁽⁵⁷⁾ Therefore, Jordanian consumers need to know their right to file a case against unfair competition acts.

As long as interest is generally the only requirement to file a case,⁽⁵⁸⁾ Article 3 of the Jordanian Unfair Competition law (JUC Law) considers that the parties that have the right to file an unfair competition lawsuit are any parties with an interest to claim compensation for damage suffered as a result of an act of unfair competition.⁽⁵⁹⁾ Beside the normal competitors in the field of trade or industry, consumers are potential claimants of such lawsuits. However, to determine the legal capacity of consumer as a litigant of an unfair competition dispute, it is needed to discuss the legal text.

Yet, this classical way of protecting consumers in Jordanian legal system can be improved by modernizing the scope of the legal interest in Jordanian legal system to cover any person that is harmed by any competition, especially the competition in Article 2(a) of the JUC law:

‘Any competition contradictory to the honest practices in the commercial and industrial activities shall be deemed one of the unfair competition acts and particularly the following: [...]’

“Any competition,” as written in the Article, may constitute a competitor or any other party. “Thus, via this Article, consumers may be protected not only from acts between competitors but also from acts between non-competitors that nevertheless affect the party in question. To clarify, this means that unfair practices against consumers can occur in situations where there is no competition between the party who commits the act and the party whose interests are affected by the act. In addition, where an act is not directed

(56) Hana Al-Gazawy, 'Illegal competition civil protection provided by Jordanian legislatives harmee'(Master thesis, Mu'ta University 2006) 17

(57) Jordan Cassation Court of Justice: civil 2734/2008 on 3/11/2008 (*Qistas For legal information*), Amman First Instance Court: civil 3841/2007 on 20/5/2008 (*Qistas For legal information*)

(58) Civil Procedural Law.No. 24/1988, Al-Jarida Al-Rasmiya[Official Gazette], No. 3545 at 735 (April 2,1988) (Jordan) Article 3(1) See also, AwadAlzo'bi, 'Alwajis of the Jordanian Civil Procedures Law' (2nd Edt, Ithraa 2010) 245

(59) Unfair competition Law, No. 15, Al-Jarida Al-Rasmiya[Official Gazette], No. 4423 at 1316 (April 2,2000) (Jordan)

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against a competitor of the person who has committed the act, it may nevertheless influence competition in the market by increasing the competitiveness of that person in relation to his competitors. As a result, the party whose interests are affected by the act (the consumer) is respected in this Article even if he/she did not practice competition. It is enough that the act per se is a commercial activity committed by a competitor.

The public interest is in preventing or combating unfair competition practices. Consumers after all are the basic factor for economic development.⁽⁶⁰⁾As a result, fair competition is not separated anymore in consumer law but combines different areas of the law. Consumer law provides for the prohibition of other commercial practices. Contract law plays an important part, protecting the consumer from professional parties. The liberalisation of markets like the telecommunication market, gas and energy, or transport, the developments in financial markets or the commercialization of broadcasting have all led to specific forms of market survey, whereby governmental agencies are attributed with specific competencies to guard the interests of the consumers in the market place. Practices like spamming, surreptitious advertising, bait and switch tactics, sweepstakes, and other forms of sales promotions have been the subject of regulation.

As a Result, the effective protection against unfair competition can be penal and/or civil. This is based on the legal justification of such protection. The penal sanctions of unfair competition acts protect the public interest.⁽⁶¹⁾ While civil remedies protect private interests, consumers here represent the public and may practice a legal act through private methods. The interests of the consumers in the fairness of commercial practices are generally regarded as legitimate⁽⁶²⁾ although the reaction to recognize this interest is quite different.⁽⁶³⁾

3.2 EU Example of Protecting Consumers by Unfair Competition Rules

Since the beginning, consumers have their own special legislation to protect them with separate rules because international unfair competition treaties, PC

(60) Skubisz and Szwaja (n 38) 234

(61)Samaha (n 54) 129

(62) Hilty and Henning-Bodewig (n 1)

(63) It may be arguable whether it is needed to set consumer under the protection of unfair competition acts. Especially, consumers are not competitors and the normal consumer can file a case independently based on general legal rules.



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and TRIPS, are not concerned with consumers.⁽⁶⁴⁾ Later, the practices of unfair competition were impacting the consumers' rights, starting with misleading advertising, deceptive pricing, malfunctioning products, and safety. Some of these unfair practices were committed against consumers where there was no complaint from a competitor, for example, in Europe a cartel agreement, as stated earlier, between competitors to raise the price of a service. As a result, consumers have become interested in unfair competition lawsuits. So the European Union law is the best example of what has happened when unfair competition acts are not addressed by competitors.

The international doctrine regarding unfair competition law, like the Unfair Commercial Practices Directive 2005/29/EC of May 11, 2005, was concerned only with the law of consumer protection rather than that of unfair practices.⁽⁶⁵⁾ Unfair competition law is recognized in substantive EU legislation, for example, the Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I).⁽⁶⁶⁾ This regulation makes specific substantive provisions for unfair competition and acts restricting free competition.⁽⁶⁷⁾ On the other (Rome II) regulation, for contractual applicable law for consumers, the applicable law is that of the country in which competition or the collective interests of the consumers are, or are likely, to be affected.⁽⁶⁸⁾

These modern steps of protecting consumers by unfair competition rules are proved by the directives of the European Community (EC). The EC leads this approach because of two special directives. The first directive is 2005/29/EC (UCPD) of the European Parliament and of the Council of 11 May 2005, which concerns unfair B2C commercial practices in the internal market.⁽⁶⁹⁾ The second

(64) Arnold (n 24) 77

(65) Wadlow (n 2) 3

(66) Council Regulation (EC) 593/2008 concerning the law applicable to contractual obligations (Rome I regulation) [2008] OJ L 10

(67) Frauke Henning-Bodewig, 'International Handbook on Unfair Competition' (2013) 44 IIC 620

(68) Council Regulation (EC) 864/2007 concerning non-contractual obligations (Rome II) [2007] Article 4 and 6

(69) Council Directive 2005/29/EC of 11 May 2005 concerning unfair B2C commercial practices in the internal market 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 ('Unfair Commercial Practices Directive') [2005] OJ L 149/ 22

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is the directive on contracts concluded after June 13, 2014.⁽⁷⁰⁾ Directive 2011/83 (Consumer Right Directive) replaced both Directive 97/7 (Distance Selling Directive) and Directive 85/577 (Contracts Negotiated Away by Consumer Directive) regarding the consumer's right to withdraw from a distance contract.⁽⁷¹⁾ Most member states recognize a cause of action for consumers. The United Kingdom, for example, has replaced its domestic consumer protection rules from unfair competition with the *Consumer Protection from Unfair Trading Regulations 2008*.⁽⁷²⁾ This regulation was issued officially as the implementation of the UCPD in 2008.⁽⁷³⁾ In addition, Denmark⁽⁷⁴⁾ and Spain⁽⁷⁵⁾ have allowed private consumers to bring legal action under a consumer rights theory. The consumer's right of claim in these countries is surprising because their public law regulation by the consumer ombudsman is already highly developed.⁽⁷⁶⁾ In addition, the right of claim for consumers in France is extensive due to the special protection provided by the French Consumer Code No. 2014-344 of March 17, 2014. It is exercised mostly in cases of illegal advertising.⁽⁷⁷⁾

4. Enforcement

Individual rights and remedies were insufficient to guarantee consumer protection without a method of enforcement; therefore, member states sought to establish additional enforcement bodies.⁽⁷⁸⁾

The enforcement of the protection against such acts is as important as the

(70) Council Directive 2011/83/ EC of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council [2001] OJ L 304/64 Article 28(2)

(71) *ibid* whereas (1). See also, Reinhard Steennot, 'The right of withdrawal under the Consumer Rights Directive as a tool to protect consumers concluding a distance contract' (2013), 29(2) *Computer Law & Security Review* 105

(72) *The Consumer Protection from Unfair Trading Regulations 2008*, SI 2008/1277

(73) Arnold (n 24) 67-68.

(74) *Marketing Practices Act 1994/428 S 19(1)*

(75) *Unfair Competition Act 1991/3 (Ley 3/1991 de Competencia Desleal, LCD) Article 27 and General Advertising Act 1988/34 (Ley 34/1988 General de Publicidad, LGP). Article 19*

(76) Möllers (n 6) 420

(77) French Consumer Code No. 2014-344 of March 17, 2014 Article L121-15. See also Möllers (n 6) 421

(78) Peter Rott, *The Protection of Consumers Interests After the Implementation of the EC Injunctions Directive Into German and English Law* (Kluwer Academic 2001) 401

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substantive law of unfair competition itself. Without provisions for adequate measures to prohibit acts of unfair competition, to prevent damage or further damage, and to obtain compensation for damages, the protection would remain theoretical. The protection is to be granted not only against acts that have occurred but also against acts that are imminent, especially, trader cases where imminent damage is to a single consumer. Due account will also be taken in connection with the provisions of Article 50(3) of the TRIPS agreement, Part III entitled *Enforcement of Intellectual Property Rights*.

If consumers have standing to bring unfair competition litigation in their own names, then they can seek compensation for their antitrust injuries,⁽⁷⁹⁾ as seen above. Sometimes, this may cause a problem for filing cases abusively. However, this shall not impact on the consumers' interests, especially if this problem can be solved by a strong judicial system.

As early as 1975, in its first program on consumer protection, the EC stressed the relevance of consumer representation by consumer associations.⁽⁸⁰⁾ Directive 84/450/EEC on misleading advertisement⁽⁸¹⁾ requires member states to ensure that adequate and effective means exist for the control of misleading advertising in the interests of consumers, but the wording of the relevant provision leaves it to the member states to determine the persons and/or organisations who can take legal action.⁽⁸²⁾ Some member

(79) Christopher Leslie, 'The Role of Consumers in Walker Process Litigation' (2007) 13 Sw. J. L. & Trade Am. 299. See also Alexander Cross, 'Federalizing "Unfair Business Practice" Claims under California's Unfair Competition Law' (2013) U. Chi. Legal F. 489. 501

(80) Rott (n 78); See also Council Regulation of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy, [1975] OJ C 92/ 1 Article 33

(81) Rott (n 78) 402. See also, Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertisement, [1984] OJ L 250 /17

(82) *ibid.* See also, Directive 84/450/EEC on misleading advertisement Article 4 (1) "Member States shall ensure that adequate and effective means exist for the control of misleading advertising in the interests of consumers as well as competitors and the general public. Such means shall include legal provisions under which persons or organizations regarded under national law as having a legitimate interest in prohibiting misleading advertising may: (a) take legal action against such advertising; and/or (b) bring such advertising before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings. It shall be for each Member State to decide which of these facilities shall be available and whether to enable the courts or administrative authorities to require prior

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states implemented this directive by establishing the legal standing of consumer associations, while others, such as the U.K. and Ireland, placed the responsibility into the hands of public bodies.⁽⁸³⁾

Article 7 of Directive 93/13/EEC on unfair terms in consumer contracts⁽⁸⁴⁾ referred to persons or organizations that have a legitimate interest under national law in protecting consumers who may take action according to the concerned national law before the courts or before competent administrative bodies.⁽⁸⁵⁾

In some countries, such as Germany, it is seen as one of the most effective commercial laws, whereas in other countries, such as the United Kingdom, it leads rather a shadowy existence.⁽⁸⁶⁾ Germany introduced legal standing for consumer associations in the law of unfair competition as early as 1965 and in the control of unfair contract terms in 1977.⁽⁸⁷⁾ Moreover, Germany has traditionally accepted that independent consumer associations best serve the consumers' interests⁽⁸⁸⁾. On the other hand, the UK lacks a law of unfair competition. It must be admitted that 'English law has made little or no progress since Professor Cornish examined the issue 44 years ago.'⁽⁸⁹⁾The UK

recourse to other established means of dealing with complaints, including those referred to in Article 5."

(83) For example, the Netherlands introduced legal standing of consumer associations in the field of misleading advertisement in 1980 with a view to the upcoming directive. For more details Henning- Bodewig (n 67)

(84) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95/ 29

(85) *ibid* Article 7 (1) "Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers. (2) The means referred to in paragraph 1 shall include provisions whereby persons or organizations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms. (3) With due regard for national laws, the legal remedies referred to in paragraph 2 may be directed separately or jointly against a number of sellers or suppliers from the same economic sector or their associations which use or recommend the use of the same general contractual terms or similar terms."

(86) Hilty and Henning-Bodewig (n 1)

(87) Rott (n 78) 411.

(88) *ibid* 401.

(89) Wadlow (n 2) 2

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has relied on state authorities on the one hand and self-regulation by business associations on the other hand. The UK only introduced consumer associations in 1999 at the same time as it faced related proceedings before the European Court of Justice based on the Unfair Contract Terms Directive 93/13/EEC.⁽⁹⁰⁾ It was the EC Directive 98/27/EC on injunctions for the protection of consumers' interests that gave a new impetus to consumer associations' litigation, leading to reforms in Germany and in the United Kingdom.⁽⁹¹⁾

The German experience also shows the requirements for the private enforcement of consumer lawsuits, requiring the plaintiff to have suffered injury or lost property as a result of the challenged business practice. Today consumer protection groups in Germany apply for restrictive injunctions in these cases. Actions for damages are rarely brought to court because of rational apathy among the consumers.⁽⁹²⁾

Generally speaking, there have been three competing models worldwide: enforcement by public authorities, enforcement by an independent body (in particular an ombudsman), or enforcement by associations representing the consumer at large.⁽⁹³⁾

5. Applications in Jordan

The Jordan Ministry of Industry and Trade (MIT) is trying to set the main principles of a consumer-protection policy.⁽⁹⁴⁾ Paragraph (A) of Article 3 of JUC law establishes a right to protect against acts of unfair competition. The public's interest protected by the **JUC Law** is not the same as the interests of the individual state enterprises or trading companies with state participation. The state enterprises and the trading companies fully owned by the state are entitled to competition law protection in accordance with their role as market operators. They are treated in the same way as other enterprises if they participate as entrepreneurs in business activities exactly like the Polish

(90) Rott (n 78) 401

(91) *ibid* 402

(92) Hans-Bernd Schaefer, 'The Bundling of Similar Interests in Litigation' (2000) 9:3 European Journal of Law and Economics 206

(93) Rott (n 78) 401. See also, the EC Commission's (Green Paper) Access of Consumers to Justice and the Settlement of Consumer Disputes in the Single Market of 16/11/1993, COM (93) 576 fin.

(94) Abu Karaky (n 12) 357.

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system.⁽⁹⁵⁾

In Jordan, as provided, there is no special legislation for consumer protection; the only specialized legislation for protecting consumers is bill of suggested law. This bill has failed to be formally drafted twice so far by Jordan's parliament.⁽⁹⁶⁾ However, there is a national consumer protection committee in Jordan acting without special provisions. The National Society for Consumer Protection⁽⁹⁷⁾ has only filed two cases in the name of consumers. The first one was case number 5/1/7164/2004 against Jordan Telecom, and the second case was case number 23/9/354/2013 against the Ministry Council and three companies (Zain Company for Communications, Jordanian Telecom Company and Umnia Company for Communication).

The first case was about unjustified fees that were paid abusively to the defendant based on illegal taxes. However, the court did not test the matter of litigation for consumers as a party but only focused on the litigationability of Jordan Telecom, so the court rejected the claim based on the Jordan Telecom cannot stand as a defendant in the case since it was acting like an agent to collect taxes for the government; the real defendant should be the Ministry Council because fees are imposed by the government not by the Jordan Telecom.⁽⁹⁸⁾ This can be a hint of the justified litigationability for consumer because the court did not question its eligibility to file the case first-hand. The latter case was filed to Jordan's High Court of Justice against the decision for the 'order for special taxes' by the Ministry Council. However, this case was rejected on November 28, 2013 based on a procedural issue; the delay of filing the case more than the 60-day period prescribed in provisions of Jordan's High Court of Justice.⁽⁹⁹⁾

From a different angle, Jordanian unfair competition law adopted the same concept of the honest practice of the PC in its national provisions of the JUC law. This concept was also adopted by the Jordanian judicial authority. This is proven by the JUC law in Article 2(A) that provides 'Any competition contradictory to the honest practices in the commercial and industrial

(95)Skubisz and Szwaja (n 38) 234

(96)Abu Karaky (n 12) 341

(97) Jordanian Society number 1989021100006 established on 23/10/1989. Jordan Ministry of Industry and Trade<<http://www.mit.gov.jo/EN>> accessed on Nov 29, 2015.

(98)Conciliation Court of Amman. Case number: civil 7164/2004

(99) High Court of Justice case number: civil 354/2013.



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activities shall be deemed one of the unfair competition acts ...'⁽¹⁰⁰⁾

In addition, Jordanian courts use the same concept to test the practice as stated in the Appellate Court decision No. 19/2002: 'The mere act of importing branded products by the same sign from a foreign origin is an act. In order to be stopped, it needs to be tested by the concept of unfair competition ... the submitted evidence does not show a competition which contradicts honest practices in the commercial and industrial matters...'⁽¹⁰¹⁾ Currently, there is no case filed on the behalf of consumers based on this law although there is no legal or procedural restriction.

It deserves to be noted that Jordan's law of competition has considered consumers explicitly as a claimant against unfair practices against competition.⁽¹⁰²⁾ While Articles 5, 6, 8, 9, and 10 of competition law provide some anti-competitive and unfair competition practices that contradict honest practices in commercial and industrial activities, Article 17 provides who can file a lawsuit against such practices.

- Cases relating to violations of provisions of Articles 5, 6, 8, 9, and 10 of this law shall be instituted according to a complaint presented to the public prosecutor by the following parties, provided that the statements be appended to preliminary Articles of proof:
 1. Licensed consumer protection associations.
 2. Any group of at least five consumers having suffered harm.'

However, no action has been taken in Jordan by any group of consumers or by the National Society for Protecting Consumers.

The provisions about civil and administrative procedures and also remedies should be interpreted to be available to natural persons and legal entities for protection against unfair competition. Such provisions may include injunctions ordering a natural person or legal entity to desist from infringement or other specified acts and practices, payment of damages to compensate for injury,

(100) JUC law Article 2(A)

(101) Jordan Appellate Court No. civil 19/2002 on Feb 6, 2002. (*Qistas For legal information s*). See also in similar meaning: Cassation Court No. civil 4479/2005, Cassation Court No. civil 3547/2006, Amman First instance Court No. civil 3841/2007.

(102) Jordan Competition Law (n 11) Article 17

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provisional measures to prevent unlawful acts or to preserve relevant evidence. According to Article 10ter(2) of the Paris Convention and footnote 11 to Article 42 of the TRIPS agreement, such remedies should also be made available to federations and associations whose legal status permits them to assert intellectual property rights. However, the provisions of Part III of the TRIPS Agreement state the possibility of enforcement according to member states' private laws. In the case of Jordan, its private law (Article 3(A) of JUC law) has nothing against adopting these procedures and remedies to cover 'any concerned party.' Thus, the remedies referred to in Paragraph (A) of Article 3 of JUC law should be available also to consumer associations and consumers individually.

Besides the other fruits that consumers can earn out of the general rules, the JUC law provides for the following claims⁽¹⁰³⁾:

- (i) Termination of the unlawful act,
- (ii) Elimination of the consequences of the unlawful act,
- (iii) Compensation for the losses incurred by the injured party according to the general principles, and
- (iv) Surrender of unjustly acquired advantages according to the general principles.

In light of this new setting, consumers can get payment of a specific amount of money for social purposes and for the promotion of the Jordanian culture or cultural heritage if the unfair competitive activity was deliberate exactly like some other comparative examples.⁽¹⁰⁴⁾

Conclusion:

From a comparative point of view, many countries have drafted market tools to control competition in markets to fulfil the international obligations required by international treaties. On the other hand, at very rare occasions, domestic laws exist to protect consumers. the aim is to protect consumers through anti unfair competition rules. Unfair competition law is concerned with fair play of commerce. It is generally regarded inter alia as necessary, so together with anti-trust law, unfair competition law is used in order to steer competition along an orderly course of trade and to promote efficient market

(103) Unfair competition Law, (n 59) Article 3 (B) para 1

(104) Skubisz and Szwaja (n 38) 236

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system that serves the interests of all participants; anti-trust law concerns competition and anti-monopoly rules.

This Article adopts a modern way to represent consumers in unfair competition lawsuits, especially between traders who perform commercial trade. Traditional perspective shows that consumers are not protected by unfair competition law as long as they do not compete. In a related field like dumping, consumers are not concerned with unfair competition acts as lower prices are in their favour even though the practice is extremely harmful for other traders.

The justification to include consumers to the protection scope related to competitions is that they have personal direct interest regarding to the unfair competition acts not only like the traders themselves but also they are the main victims of such unfair practices. It is proven by practice that when misleading or other unfair competitions acts exist, they can be noted by average consumers more than by any other criteria.

This issue of consumer protection through unfair competition existed in European Union countries. The consumer protection finds a place in the competition rules directives, and that was transformed to domestic rules and later in judgments. In this field, European Commission issued many directives, mainly the EU Unfair Commercial Practices Directive (UCPD), to try harmonization the legal practice of protecting consumers among EU countries. An example from UK, prior to exit from the EU, It amended its domestic consumer protection legislation with the Consumer Protection from Unfair Trading Regulations 2008. This regulation was issued officially as the implementation of the UCPD in 2008. In addition, Denmark and Spain allowed private consumers to bring legal action under a consumer rights theory. The consumer's right to file a claim in those countries is surprising because the public law regulation by the Consumer Ombudsman is already highly developed. Furthermore, the right of claim for consumers in France is extensive due to the special protection provided by the French Consumer Code. It is exercised mostly in cases of illegal advertising.

However, a global harmonisation is even more difficult to achieve than the European harmonisation. For this reason, few international agreements like the PC and TRIPS, regarded the rules of fair trade and fair competition, in some instances are required to respect the interest of consumers as a plaintiff party

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in the unfair competition lawsuits.

To drag this practice to countries that have no consumer protection legislations, there is a need to focus on the general rules of tort, sales defects and abuse practice of the competitors to back up the source of unfair competition acts as a legal source for including consumers in the scope of protection.

Still there is a remark about the committee or the entities that represent the interest of consumers. However, it is important to support such committees to file cases before domestic courts to find the judicial precedent in a demotic standard.

This is how civilized counties follow to abide by their international obligations and protect consumer equally.

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إعادة التفكير في خصومة المستهلك في المنافسة غير المشروعة

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باحث دكتوراه - الجامعة الأردنية

المملكة الأردنية الهاشمية

الملخص باللغة العربية:

يتناول هذا البحث دعاوى المنافسة غير المشروعة من وجهة نظر الخصومة، بعيداً عن الجانب الموضوعي في هذا المجال. فتقدم هذه الدراسة مساهمة في مجال خدمات المستهلكين القانونية في أعمال المنافسة غير المشروعة من خلال إشراك المستهلكين في هذه الدعوى كخصوم. بحيث أولت مصلحة المستهلك أهلية لتكون بمثابة خصم في دعاوى المنافسة غير المشروعة، التي كانت تقليدياً محصورة على التجار المتنافسين فيما بينهم فقط. تتبنى هذه الدراسة الممارسات الأوروبية وتتوسع في تطبيقها على الحالة الأردنية التي تعتبر بمثابة مثال على الدول التي تفتقر إلى تشريعات وطنية لحماية المستهلك.