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UNFAIR TRADE PRACTICES IN DIGITAL CIVIL TRANSACTIONS

Tadjibayeva Mahsuda Rustamjonovna,
Senior Lecturer,
"Business Law" department,
Tashkent State University of Law
Email address: m.tadjibayeva@tsul.uz

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Abstract:

Today, digital civil transactions is replacing traditional commerce around the world, allowing consumers to engage in business activities inseparably from production, creating opportunities for consumers to choose and purchase products at a convenient time, place and speed. In digital civil transactions, which is important in reducing unnecessary time and costs, it is also important not to infringe on the rights and interests of the parties, and not to harm the consumer. In e-commerce, unfair trade practices and methods to eliminate them as an injury to competitors and consumers play an important role in the development of e-commerce.

Keywords: digital civil transactions, unfair trade practices, unfair competition, price, misinformation, consumer consent, price manipulation, consumer discrimination, exploitation of consumer shortcomings, product warranties and incorrect recommendations, false or misleading advertising.

INTRODUCTION

Currently, the Internet has already managed to enter the daily life of society with high speed and become an integral part of it. Internet relationships, however, are still not fully regulated, and, in turn, these relationships are developing and manifesting themselves in new forms. The Internet gives rise to various legal relationships, such as e-commerce, electronic digital signatures, access and distribution of information, spam, domain name rights, electronic money, etc. [1] Developing new legislation that effectively regulates unregulated issues [2], as well as pre-determining the rules governing such relationships, will help in combating various unlawful practices.

The development of entrepreneurship and the activities of business entities, on the one hand, have a positive impact on the growth of production, the development of the economy, on the other hand, lead to new types of violations in the economy [3]. This article also discusses e-commerce and the violations that can occur in it.

E-commerce is the entrepreneurial activity of selling goods, performing work and providing services, carried out with the use of information systems. Protection of the rights and legitimate interests of e-commerce participants is one of the basic and legal principles of e-commerce. As a result of the widespread development of e-commerce, there are cases of violation of the rights and interests of its participants, including consumers. In particular, in practice it is not uncommon for persons selling goods (works, services) in e-commerce to influence the price of goods (works, services) by predatory prices of their firms [4], thereby creating unfair competition in the market, using unfair trade practices and causing harm to consumers in the long term. In this situation, the identification of unfair trade practices and their characteristics, forms of unfair competition in trade relations serves as a practical legal tool to solve the problem.

There are different views on the concept of "unfair trade practices", which include some forms of unfair competition. In particular, the practice of dishonest trading is defined as a practice that roughly deviates from good business practices, violate the principles of fair and equitable dealing, and are imposed unilaterally by one trading partner on another .

According to German lawyer Wolfgang Schumacher, a certain trade practice is called an unfair trade practice if it violates the requirements of professional integrity and seriously disturbs or could seriously affect the economic behavior of consumers with respect to the product they purchase [5].

Lawyers Bahshullo Khojaev and Shuya Hayashi provide a broader definition of unfair trade practices. Specifically, unfair trade practices, which include various types of fraud, scams or other malicious trade practices and mainly affect consumers directly (which is reflected in the business to consumer relationship), as well as competitors or others, can also include fraud on commercial entities (in business to business relationships) [6].

Unfair trade practices are trade practices that use dishonest or fraudulent methods to encourage the sale, use or delivery of any goods or services . Unfair trade practices refer to any trade practice that causes harm or loss to the consumer of such goods or services by performing one or more methods to induce the sale of goods, the performance of work, or the provision of any service [7].

In the United States and Europe, such conduct is illegal under the law (especially consumer protection law), allowing consumers to seek compensation or punishment from the competent authorities. Unfair trade practices are sometimes called " fraudulent trade practices" or "unfair business practices."

Most U.S. states first enacted unfair trade practice laws between the 1960s and 1970s. Since then, many states have enacted such laws to prevent unfair trade practices. In particular, Section 5(a) of the Federal Trade Commission Act prohibits "unfair or deceptive acts or practices in trade or in processes affecting trade." Under this rule, dishonest acts are those that are likely to injure or harm consumers, from which consumers cannot escape, and in which the benefits of the product or service do not outweigh the fraud [8]. Fraud is defined as an act in which the seller misleads the consumer or misrepresents information in violation of the principle of fairness [9]. The purpose of trade fraud laws is to enable consumers to make informed, knowledgeable decisions about the goods and services they purchase.

Thus, unfair trade practices are any form of deceiving competitors and consumers to gain an advantage or profit in the marketplace, abusing consumer trust through fraud, or harming the consumer through unethical means. Consumers commonly observe unfair trade practices when purchasing goods and services, renting, insuring and settling, and collecting debts. Unfair competition, especially unfair trade practices, has the following characteristics.

- - Unfair competition and unfair trade practices usually harm competing entities or consumers;
- - A company engaged in unfair competition and unfair trade practices seeks to gain market or business advantage and uses deceptive, fraudulent or immoral practices [10];
- - Unfair competition and unfair trade practices are also carried out through market manipulation.

Unfair trade practices are constantly found in one form or another, not only in traditional trade relations, but also in e-commerce. In particular, special rules governing practices contrary to the principles of competition law, such as product warranties and misrepresentations, improper advertising, taking advantage of customer deficiencies, and misrepresentation of product quality and price, should be reflected in the rules governing e-commerce.

Looking at unfair trading practices that are widespread in e-commerce, one by one we can see that providing misleading price information in trading relationships is the most common type of unfair trading practice.

Incorrect price information. An example would be a false discount , which gives you an offer to buy for a certain period of time ("Limited time offer"). In fact, for a product or service, such a price may be permanent, or it may be advertised under the guise of "Going out of business" and actually misleading the customer without changing the price [8].

The following problematic situation is a prime example of the practice of providing misleading price information in e-commerce.

The M-phones store announced the launch of an online "buy one, get one free" campaign for a new phone with the highest demand of the season. This offer was only available for the "biggest discount day." Since it was announced that the in-store promotion would begin at 5:00 a.m., shoppers would be present until the store opened. Shoppers will almost certainly press each other as they wait in line, knowing that when the line arrives or they have product, they must use the special mobile rate, which is 100 percent more expensive than the regular price when using a cell phone sold under the promotion. While the store's website or promotion ads don't mention the phone plan or its high price to get a free phone [8].

Failure to disclose relevant information about the price of the product can cause serious damage to competitors and especially consumers [12]. In this regard, the rules of e-commerce in electronic commerce should provide for the establishment of a detailed system for the participants of e-commerce in order to prevent any unfair trading practices or to control and prevent the erroneous advertising of sellers on their platforms [11].

Explicit consumer consent. E-commerce entities must obtain the explicit consent of the consumer when purchasing any product or service offered by the consumer on their platforms. Typically, a customer's consent to a purchase is obtained by the system on the platform automatically checking a pre-defined cell. In such cases, pressing the payment button at the time of payment automatically forces the consumer to agree to the terms of such purchase, without giving him the opportunity to accept it only after getting acquainted with the terms and conditions of the purchase. As a result, there is a need for clear consumer approval before purchase [9].

The issue of whether this consent is required by the consumer after registration on the online e-commerce platform or the consumer is required to consent each time the purchase transaction is executed is also significant when agreeing to sign the check box in electronic commerce [11].

In the legislative experience of some foreign countries, there are rules requiring that in e-commerce from the site allow consumers to make purchases without registration and leave the site as a "visitor", as well as to provide the consumer with a clear consent to the purchase only after acquaintance with the rules and conditions of purchase [11].

Price manipulation. Unfair trading practices in e-commerce can also be done through price manipulation. Price manipulation as market manipulation is the deliberately intentionally artificially changing the price in a market. The manipulator pretends that the market price is formed on the basis of supply and demand. They try to make a profit by misleading consumers and competitors and taking advantage of price changes [13]. Such actions hinder fair pricing in the market and cause unexpected losses to investors, so they are prohibited by law [14].

In e-commerce, there are cases of manipulation (change) of the price of goods or services offered by e-commerce entities for unreasonable profit. Price manipulation can involve unfair methods and fraudulent practices, such as large discounts: deep discounts, reebies, and cash back offers.

Sometimes some e-commerce entities have problems manipulating prices by offering large discounts on certain products listed at prices that are higher than the maximum selling price of their products. In many countries, such cases are unfair trade practices that violate consumer protection laws.

Restrictions on price manipulation in e-commerce and the establishment of rules to ensure equal conditions for all sellers should be raised to the level of competition policy. Only when such rules are enshrined in international and national law will all e-commerce entities be able to compete in a transparent and impartial manner.

Consumer discrimination and taking advantage of consumer shortcomings. Refusal to sell the product to foreign consumers will prevent the emergence of a truly single market for e-commerce. Refusing to sell a product to consumers is one of the most dishonest marketing strategies, as e-shops may refuse to allow consumers with IP addresses in certain countries to shop online. Refusal to sell a product to a customer usually occurs at one of the ordering stages. Often, the consumer realizes that it is not possible to make a purchase while trying to place an order. By refusing to sell, various forms of consumer discrimination can affect the demand of consumers looking for a particular product. Such dishonest practices involve offering consumers who are residents of a particular country a choice of products that are completely different from those offered in another country. Also, the Consumer Choice is often directed from the selected foreign e-shop to the e-shop located in the state of their residence, where only certain selection goods are sold.

In doing so, service providers use automatic transfer and redirect the consumer to another e-store without the consumer's consent or notice. These practices can lead to consumer frustration, the impression of being excluded from the domestic market, or even discrimination across the country of residence [15].

At the same time, there is a practice of classifying consumers into different classes or sellers into different categories. In the electronic commerce regulations, there should be no discrimination between consumers" of a certain category " or any calcification that directly or indirectly affects consumer rights between consumers should not be allowed. The legislation of foreign countries contains rules and conditions governing the relations of e-commerce entities with sellers on their platforms, including the obligation to disclose to any particular seller (s) in the market or a classified description of any goods or services [11].

There are also cases in e-commerce that increase revenue by taking advantage of consumer shortcomings. In particular, there are cases of unfair trade practices, such as the consumer's ignorance of the language, or the use of his shortcomings as a representative of the socially vulnerable, to deceive them, to harm them by convincing them of false information.

Product warranties and incorrect recommendations. The guarantee, such as the guarantee of the return of the money for the sold products or the offer of free repair or replacement, can not only achieve the buyer of the products for the entrepreneur, but also the obligation to fulfill his warranty as a result of the opposite effect of advertising [16].

In e-commerce, as in traditional trade, there are also unfair trade practices, such as non-compliance with the terms of the guarantee provided by entrepreneurs for the products they sell. It is especially important to strengthen the obligation to guarantee the product when purchasing a product through e-commerce. Because consumers are not able to hold and inspect the product, the buyer is at greater risk when buying it [16]. If the expected result of the advertisement has an adverse effect on the buyer, the entrepreneur will not go beyond the promises made in the product warranty, which will lead to unfair trade practices. It is also an unfair trade practice for an entrepreneur to give false comments and testimonials about their products, and it is also a bad practice to invent something unknown and write sensational comments on his or her behalf.

Failure to disclose relevant information. In e-commerce, it is limited to the fact that the consumer has full information about the characteristics of the product. It is imperative that the facts which reasonably affect the buyer's purchasing decision with limited range of product perception options are open. Failure to provide relevant information to the consumer is also a dishonest trading practice, equated with the process of openly using false or misleading information. That is why it is necessary for sellers to disclose their full price before accepting payment for their products or services [8].

Misleading or misleading advertising. In e-commerce, consumers become victims of false and misleading advertising as an example of more unfair trading practices. Inaccurate information violates the economic function of advertising, and also weakens the confidence of consumers in the market [17]. False advertising is a distortion of information about a product, service or price, by advertising a particular product and instead involves dishonest sales strategies such as selling another product [8]. Among other examples of false advertising include false prices, false recommendations, deceptive guarantees, false claims, and descriptions that increase the characteristics of a product or service.

It is clear that the information given through advertising does not correspond to reality, the fact that on the internet pages are displayed by increasing product characteristics through the comments of various fake consumers will harm the consumer. That is why e-commerce entities must not present themselves as consumers in the consumer comments for the advertised product and do not post comments about the goods or services they sell, misrepresent the quality or characteristics of any goods or services. It is necessary not to show. Foreign e-commerce regulations require foreign countries not to advertise the goods or services offered in a way that does not correspond to the actual features of such goods or services [11].

IN CONCLUSION, the development of e-commerce comes out of the need to combat the practice that harms consumers. The e-commerce regulations set up a detailed system for e-commerce organizations to monitor and prevent any dishonest trading practices or misleading advertising by sellers on their platforms, as well as to force them to create internal rules in order to avoid price manipulation and to work with consumer complaints.

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