

# New Frontiers of Comparative LAW

Tong Io Cheng (Editor)  
Salvatore Mancuso (Co-editor)



澳門大學  
UNIVERSIDADE DE MACAU  
UNIVERSITY OF MACAU

 LexisNexis

## Unfair Commercial Practices and Cyber Consumer Protection\*

Augusto Teixeira Garcia

Associate Professor, University of Macao

### DEFINITION OF THE UNFAIR COMMERCIAL PRACTICE, BEYOND BOTH THE VARIETY OF LEGISLATIONS AND THE DIFFERENCES BETWEEN MENTALITIES AND CULTURES

It is agreed that a market economy requires that each party has a level playing field and therefore necessitates a certain set of rules to be followed by interested parties. That is, one has to ensure that all players abide by the same rules so that advantages cannot arise from distortion of the rules.<sup>1</sup> These sets of rules may not necessarily have been unanimously consented to, but they are to be understood as implicitly accepted by all the parties competing in the market. Any honest trader sets his standard of conduct by what is considered honest and fair dealing.

Competition is often compared to a sporting competition with two teams and a referee. The competition has a number of rules that have to be followed by the players, and which are enforceable by the referee. If the rules are followed, then the best team should win. The referee is there in order to avoid a situation whereby the worse team wins by breaking the rules. Competition is basically the same: there are players who are the competitors, and a referee who is the consumer. To be successful, the competitors need to attract interest and consumption of their products or services and they do this by various means; in any case, the means by which the attention of the consumer is attracted cannot be contrary to what are considered honest practices (the rules of the game). This supposes that the competitors themselves have agreed to a certain number of rules to conform their conduct to while attracting business (playing the game of competition). This set of rules has been constructed over the years, first by jurisprudence (France), and then by way of unfair competition statutes that have been incorporated in some countries.<sup>2</sup>

In fact, interested parties have come to agree that competition should not be pursued by any means, otherwise there would be no feasibility whatsoever in entering the market, which would in the end harm the market itself because it would not be the best, but the meanest that would prevail. There should be limits

\* Regional Report (Compiled, as requested, on the basis of a questionnaire): People's Republic of China, Macao Special Administrative Region  
17th Congress of the International Academy of Comparative Law  
16–22 July 2006, Utrecht, The Netherlands

1 *Protection against unfair competition, analysis of the present World situation*, WIPO, Geneva, 1994, p. 15 fls.

2 Peter Joachim Kaufmann, *Passing off and misappropriation*, IIC Studies, Studies in Industrial Property and Copyright Law, VCH, 1986, pp. 8 fls.