

# UNFAIR COMPETITION OF THE COMMERCIAL CODE

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## ABSTRACT

*Deceptive or dishonest acts and commercial practices that affect the relations between competitors or between suppliers and customers are considered unfair competition and are unlawful in accordance with the TCC. It is considered unfair competition when undertakings present deceptive information to the public about their own activities or the activities of their rivals in various ways, try to compete with their rivals by disparaging them in violation of the rules of goodwill, imitate the brands or products of their rivals, and use the names or titles of their competitors. is prohibited. In this context, unfair competition is based on moral, not economic, principles. In this article, the concepts of competition, which are extremely important for companies, are mentioned and examples from countries are given. It is thought that the study will lead to other studies in the field.*

**Keywords:** Companies, Law, Unfair Competition, Competition

## INTRODUCTION

The main purpose expected from the prohibition of unfair competition is the protection of the individual undertaking or undertakings that are exposed to unfair competition, and the application authority is the judiciary. (See TTK, art. 54 and 55). Competition, which is extremely important for companies, leads companies to be effective and efficient. This means that more quality goods and services are offered at lower prices (Inana & Piker, 2007).

### Economic Competition

Economic competition, in the general rationale of the Law on the Protection of Competition; “competition in market economies in general; It is defined as the process of relations in the form of a race or opposition between economic units in order to achieve certain goals such as profit, sales amount and share. According to Article 56 of the TCC numbered 6102, in order to talk about unfair competition, first of all, the parties to unfair competition must have the right to compete, that is, the existence of economic efficiency. There are certain conditions for the existence of economic competition. These; freedom of work, freedom of contract and a competitive trade environment (Tamer, 2011).

The definition of unfair competition is important both in theory and in practice. Since the cases of unfair competition are not determined according to the limited number principle, it increases the importance of the definition that other acts can also be considered unfair competition. (Aydın, 2008).

Unfair competition is defined in Article 54 of the TCC as “deceptive or other acts contrary to the rule of good faith and commercial practices that affect the relations between competitors or between suppliers and customers” and it is stated that it is unlawful.

The principle of free trade and freedom of competition form the basis of the current liberal economy. In the first paragraph of Article 48 of the Constitution, “Everyone has the freedom to work and contract in any field they wish. The principle of 'it is free to establish private enterprises' emphasizes the principle of free trade and the freedom of competition.

However, the existence of freedom of competition does not mean that there is an unlimited right to compete.

Competition should be conducted within the framework of the rules of honesty and should not be abused. Regulations regarding unfair competition have been made in almost every country in order to draw the limits of the freedom of competition and to determine the legal remedies that can be applied in case these limits are exceeded. In the regulations made in the country's legislation on the subject, the idea of protecting the economic personality of the competitors was initially considered, and later on, the issue of preventing unfair competition in terms of the interests of the society was emphasized, and in this context, not only the competitors but also the customers and professional-economic unions were given the right to sue.

Because the provisions on unfair competition serve the purpose of establishing fair and undistorted competition for the benefit of all participants. As stated in the justification of the Turkish Commercial Code (TTK) numbered 6102, the word participants means the economy, consumers and the public.

Therefore, with the use of the word "participants", the way of specializing the rules of competition only to the relations between the competitors has been blocked. According to the regulations in question, the aim of unfair competition law is to ensure fair competition and everyone gets results in proportion to their efforts.

### **Regulation of Unfair Competition in Turkish Law**

The issue of unfair competition in Turkish Law is mainly regulated in the two basic laws, the Code of Obligations and the Commercial Code. In addition, in terms of unfair competition actions committed against consumers, "Commercial Advertisements" and "Unfair Commercial Practices" are specifically regulated in articles 61 and 62 of the Law No. 6502 on the Protection of Consumers, respectively.

Article 57 of the Turkish Code of Obligations (TBK) carries the title of "Unfair Competition". TBK m. 57/ f. According to the provision 1, "A person whose customers are reduced or who is in danger of losing them due to the dissemination of untrue news or making such announcements or other acts contrary to the rules of honesty may request that these behaviors be terminated and that his/her damage be compensated in case of fault." In the second paragraph of the same article, it is emphasized that the provisions of the Turkish Commercial Code will apply to unfair competition in commercial affairs.

Article 57 of TCO No. 6098 on unfair competition, former Code of Obligations No. 818 (eBK) art. Almost exactly taken from 48. For this reason, the dual system formed in the eBK-eTTK period regarding unfair competition continues to exist in the new BK- new TCC period.

While the Swiss Code of Obligations was adopted, the regulation on unfair competition was included in the Swiss Code of Obligations, since there was no independent unfair competition regulation at that time. While our old Code of Obligations No. 818 was being prepared, this regulation on unfair competition (as Article 48 of the eBK) was also quoted. However, later, when the Swiss Unfair Competition Law, which is an independent regulation, was adopted in Switzerland, the said regulation was removed from the Swiss Code of Obligations, thus preventing the formation of a dual system.

TBK m. 57, which aims to protect economic personality and regulates non-commercial unfair competition only; TTK m. It is an extremely narrow provision compared to Articles 54 and its sequel. When the 54th and 55th articles of the TCC are examined, the provisions of this Law are not only applied in cases of unfair competition related to commercial affairs; without distinction between ordinary business and commercial business, it is seen that it is a general provisional regulation that can be applied in terms of deceptive or

dishonest acts and commercial practices that affect the relations between competitors or between suppliers and customers.

For this reason, TTK m. Against the 54th and the following articles, TBK m. 57 f. It is claimed that 1 has no application area. In a decision dated 21.02.2010, the 11th Civil Chamber of the Court of Cassation stated that even a consumer can commit an act of unfair competition and this act of the consumer can also be evaluated within the framework of the TCC. The most appropriate solution is to regulate unfair competition in a special law, not in the Commercial Code, as was done in Switzerland, and abolish the aforementioned provision of the Code of Obligations.

### **Other Regulations Regarding Competition**

The Law on the Protection of Competition (RKHK) dated 1994 and numbered 4054 was enacted in order to prevent agreements and concerted practices between undertakings that prevent, distort or restrict competition in the goods or service markets or cause this result. Competition law regulated in the RKHK essentially serves to ensure the existence of a competitive environment. Unfair competition provisions, on the other hand, have been introduced in order to conduct competition within the framework of honesty rules.

With the aim of preventing unfair competition in imports, the Law No. 3577 on the Prevention of Unfair Competition in Imports was adopted on 14 June 1989 and the purpose of the 1st article of the Law is expressed as the protection of a production branch against the damage caused by dumping and subsidy imports, which are the cases of unfair competition in imports. has been done. In this context, in order to prevent unfair competition in imports and to take the necessary administrative, financial and economic decisions in this regard, the 'Evaluation Board for Unfair Competition in Imports' has been established in accordance with Article 6 of the Law.

Regulations have also been made in the international arena regarding unfair competition. Pursuant to Article 10 of the Paris Convention on the Protection of Industrial Property Rights, to which Turkey is a party, the parties are obliged to provide the necessary legal protection against unfair competition to the citizens of other countries that accept this contract.

### **Unfair Competition According to Turkish Commercial Code**

#### **Purpose of Unfair Competition Provisions**

TTK m. According to 54/1, "The purpose of the provisions of this Part on unfair competition is to ensure fair and undistorted competition for the benefit of all participants."

This regulation was inspired by Article 1 of the Swiss Unfair Competition Law. The purpose of the said law is to protect rival undertakings, consumers and other market participants against unfair competition.

In the justification of the TCC, it has been stated that with the expression "all participants" in relation to Article 54, the economy, consumer and public, which are the famous triad of competition law, are meant, and with the use of this word, the way of specializing the competition rules to the relations between competitors has been blocked.

It has been emphasized that the rule of honest behavior is decisive in the diagnosis of unfair competition and it has been stated that all participants trust and have the right to trust that the market actors will act honestly, and the violator of this rule creates the situation of unfair competition because he acts against trust.

#### **Definition of Unfair Competition**

In the 56th article of the former Turkish Commercial Code numbered 6762, unfair competition is defined in general as "any kind of abuse of economic competition by deceptive acts or other ways contrary to the rules of goodwill".

TTK m. 54 f. With the provision 2, unfair competition is expressed as deceptive or otherwise contrary to the rule of good faith and commercial practices that affect the relations between competitors or between suppliers and customers.

In this context, in order to talk about unfair competition;

Parties do not need to be competitors. In the justification of the Swiss Law Against Unfair Competition of 1943, it is clearly stated that unfair competition cannot be committed only by those who are in competition with each other. With the TCC, the word "participants" was used by explicitly abandoning the existence of a competitive relationship for the implementation of unfair competition provisions, and the way of the specificity of competition rules to relations between competitors was blocked. In this context, both parties do not need to be merchants.

Regarding the subject, the 11th Civil Chamber of the Supreme Court of Appeals, in a decision of Atılım University, which was established by Atılım Foundation, alleging the existence of unfair competition due to the defendant company operating under the name Atılım Dershanesi, stated that a condition such as both parties must be merchants in order to be able to talk about the existence of unfair competition. He stated that he was not wanted.

The perpetrator of unfair competition need not have benefited.

It is not necessary for the perpetrator of unfair competition to be at fault. Fault is sought only in the filing of compensation cases based on unfair competition. TTK m. 56 f. In the event that a lawsuit is filed regarding detection, prohibition and elimination of the material situation that is the result of unfair competition in accordance with 1, the condition of fault is not sought.

It is sufficient that the person subjected to unfair competition has suffered the 'risk of harm'. The fact that it has been damaged is only a condition sought in the claim for compensation. In an incident that was the subject of the Supreme Court decision, the defendant company stated that eleven drivers working in the plaintiff company had moved to their own company, and that there were no good drivers left in the plaintiff company, with the advertisement it placed in the newspaper. In this case, according to the Court of Cassation, it is clear that the plaintiff company faces the danger of harm in terms of economic interests and this situation constitutes unfair competition.

### **Elements of Unfair Competition**

TTK m. 54 f. According to the provision 2, there must be an economic competition in order for unfair competition to be in question. According to this, for example, even if a student cheats in order to be the top of the class, it does not constitute unfair competition since there is no economic competition. However, if a monetary reward is promised to the top of the class, cheating may constitute unfair competition.

Another element of unfair competition is the use of the right to compete economically, contrary to the rule of good faith. Regarding this matter, TCC art. 54 f. In Article 2, it is stipulated that deceptive or other acts contrary to the rule of good faith and commercial practices will constitute unfair competition.

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## Unfair Competition Situations

The provision of paragraph 2 of Article 54 of the TCC is a general provision regarding unfair competition and its application area is quite wide. After giving place to this general provision, TTK m. In 55, the main special cases of unfair competition, which are frequently encountered in practice and contrary to the rule of good faith, are listed.

With the expression "mainly" in the law, TCC art. It has been shown that the cases of unfair competition listed in 55 are not limited in number and are considered as examples. In this regard, m. Art. 54 f. There may be behaviors and practices that can be described as unfair competition within the framework of the principle set out in Article 2. TTK m. For a behavior that is included in one of the categories listed in 55, an examination is no longer required according to the general provision and this behavior is considered to constitute direct unfair competition.

In Article 55 of the TCC, cases of unfair competition are listed in six categories. These:

- Advertisements and sales methods contrary to the rule of honesty and other unlawful acts,
- To lead to breach or termination of the contract,
- Unauthorized use of other people's work products,
- Unlawfully revealing production and business secrets,
- Failure to comply with business terms and
- Using transaction terms contrary to the rule of honesty and examples were given for each of the six categories.

Thus, TTK m. 55, the main cases of unfair competition; It has been arranged with six paragraphs and a total of twenty-one examples under the weirs.

## Consequences of Unfair Competition

TTK m. with 56 m. Among 63, provisions regarding legal and criminal liability in terms of unfair competition are included and the persons who can apply to legal remedies are regulated in detail. In addition to judicial remedies, it has also been stated that courts may order interim injunctions before or during an unfair competition lawsuit.

Lawsuits that may be filed in case of unfair competition, TCC art. 56 f. It is specified in 1. According to this article, cases of unfair competition; can be filed as determination, prohibition of unfair competition, reinstatement and compensation. While determining the lawsuits that can be filed due to unfair competition, it is seen that a distinction is made according to whether the person who carries out the unfair competition is defective or not, and the fault of the perpetrator is sought in order to file compensation cases.

Persons who can be plaintiffs and defendants in civil lawsuits in unfair competition are regulated within the framework of the limited number principle in the TCC. Lawsuits based on unfair competition, as they are absolute commercial lawsuits, TCC art. 4, before the Commercial Courts of First Instance.

The issue of statute of limitations in unfair competition is stipulated in Article 60 of the TCC. Accordingly, TTK art. The lawsuits set out in Article 56 shall be time-barred by

one year from the day the party entitled to the action learns of the birth of these rights, and in any case three years from the date of their birth.

Regarding criminal liability, it should be noted that, as a rule, committing an act of unfair competition does not constitute a crime, according to TCC art. Criminal liability comes to the fore in case of intentionally committing one of the cases of unfair competition listed in Article 55.

In addition, TTK m. As stipulated in Article 62, those who deliberately provide false or misleading information about their personal situation, products, work products, commercial activities and works, their employees, proxies or other assistants, the production or trade secrets of the employer or their clients in order to prefer their offers and offers to those of their competitors. Criminal liability is also envisaged for those who cheat in order to get them to take possession of it, or who do not prevent this act or correct untrue statements despite learning that these persons have committed an act of unfair competition that requires punishment while doing their job.

TTK m. Pursuant to 62, the persons listed above are sentenced to imprisonment of up to two years or to a judicial fine, for acts falling within the scope of each subparagraph, upon the complaint of one of those who have the right to file a civil lawsuit pursuant to Article 56, unless the act does not constitute another offense requiring a heavier penalty.

Unfair competition is the situation of taking an action that violates the rules of operation of the market in general and distorts competition in a way that violates the rule of good faith.

Unfair competition is the name given to all of the harmful actions that one person or institution performs on another in any field in commercial law. Persons or institutions that practice unfair competition may be deemed to be committing a crime under certain conditions, or they may have the right to file a lawsuit against the other party.

Agreements restricting competition are evaluated within the scope of Article 4 of the Law. According to this Law, it is prohibited for companies to come together and perform the actions listed below.

- Price determination (increasing price, fixing it, determining minimum price, removing discounts, determining discount rates, profit margin, determining standard price formulas, etc.)
- Giving collusive bids to the tenders (sharing the tenders, determining the winner, boycotting the tender, determining the bids to be given to the tender, etc.)
- Market/region/customer sharing
- Determination of production / sales amount
- Making the activities of rival companies more difficult / taking them out of the market / preventing new entries

### What are the Conditions of Unfair Competition?

- “Competitors have agreed to increase prices.”
- “The dominant company in the market complicates my activity.”
- “Companies make false and misleading advertisements.”
- “My competitor disparages my company and products.”
- “Dumping is done on products coming from abroad.”

### The Competition Law has introduced prohibitions in three main areas.

- Agreements Restricting Competition, Harmonized Actions and Decisions
- Abuse of Dominant Position
- Mergers or Acquisitions that Create or Strengthen a Dominant Position

### What is Competition?

Competition can be defined as the competition of sellers in a market to acquire more customers and increase their sales of goods and services, and therefore their profits. Competition, which is indispensable for an effectively functioning market system, also contributes to social justice and economic development.

### **Why is Competition Desired? What are the Harms of Unfair Competition?**

- Unfair competition causes the disappearance of the following benefits:
- Low Price, High Quality: Companies have to lower their prices and increase their product quality in order to survive in a competitive environment. All consumers benefit from price reductions and quality increases resulting from competition.
- Freedom of Choice: A competitive environment means product variety. The consumer has the opportunity to choose the product of the desired price and quality among many alternatives.
- Technological Development: Companies have to improve their existing products or produce new products in order to increase their market share in a competitive environment. The existence of many products that make our lives easier is a result of this competition between companies.
- Improvement in Social Welfare: Competition enables companies to produce and invest in a way that meets the demands and expectations of the consumer, and thus the best use of economic resources. This contributes to the development of social welfare.
- Increasing Competitiveness: The healthy functioning of the domestic racing environment also contributes to competitiveness in foreign markets. The existence of an export-based, growing economy opened to foreign markets is possible with companies that are ready for international competition.

### **Unfair Competition Provisions are Included In The New Turkish Commercial Code No. 6102:**

#### **Turkish Commercial Law Part Four Unfair Competition**

##### **In General**

##### **Purpose and Principle**

ARTICLE 54 – (1) The purpose of the provisions of this Part on unfair competition is to ensure fair and undistorted competition for the benefit of all participants.

(2) Deceptive or other acts of breach of good faith and commercial practices that affect the relations between competitors or between suppliers and customers are unfair and unlawful.

##### **Behaviors Contrary to the Rule of Honesty, Commercial Practices**

Article 55 – The cases listed below are the main cases of unfair competition:

1. Advertisements and sales methods against the rules of honesty and other unlawful acts and especially;
2. Disparaging others or their goods, work products, prices, activities or business with false, misleading or unnecessarily offensive statements,
3. To make false or misleading statements about himself, his commercial enterprise, business signs, goods, business products, activities, prices, stocks, the form of sales campaigns and business relations, or to put the third party ahead of the competition by the same means,
4. Although he has not received honors, diplomas or awards, trying to create the illusion that he has exceptional talent by acting as if he has them, or using incorrect professional names and symbols that are suitable for this,
5. To take measures that cause confusion with someone else's goods, work products, activities or business,
6. In a way that misrepresents himself, his goods, work products, activities, prices, untrue, misleading, unduly disparaging his competitor or unduly taking advantage of his reputation; to compare goods, work products or prices with others, or to put the third party ahead in similar ways,

7. Offering selected goods, work products or activities for sale more than once below the supply price, emphasizing these offerings in their advertisements and thereby misleading customers about their own or competitors' ability; insofar as the selling price is below the supply price applied in the purchase of the same type of goods, work products or activities in a similar volume, the existence of deception is presumed; If the defendant proves the real supply price, this price will be the basis for the evaluation,
8. Mislead the customer about the true value of the presentation with additional actions,
9. Limiting the customer's freedom of decision, especially with aggressive sales methods,
10. Concealing the characteristics, quantity, purpose of use, benefits or dangers of goods, work products or activities and thus mislead the customer,
11. Not stating the title clearly in the announcements made to the public regarding contracts for sale in installments or similar legal transactions, not specifying the cash or total sales price or the additional cost arising from the sale in installments in Turkish Lira and annual rates,
12. Not stating the title clearly in public announcements regarding consumer loans or not making clear statements regarding the net amounts, total expenses, effective annual interests of the loans,
13. Contract formulas containing incomplete or incorrect information regarding the subject of the contract, price, payment terms, contract duration, the customer's right of withdrawal or termination, or the right to pay the remaining debt before maturity, within the framework of its business activities to use.
14. To lead to breach or termination of the contract; especially;
15. Directing them to act in violation of the agreements they have made with others, so that they can make a contract with the customers themselves,
16. To try to benefit himself or others by providing or offering benefits to the workers, representatives and other assistants of third parties that they do not deserve and that may lead them to act contrary to their obligations in the performance of their work,
17. Directing workers, proxies or other auxiliary persons to disclose or seize the production and business secrets of their employers or clients,
18. To direct the buyer or the borrower, who has made an installment sale, cash sale or consumer loan contract, to withdraw from this contract or the buyer who has made a cash sale contract to terminate this contract, so that he can conclude such a contract with him.
19. Başkalarının iş ürünlerinden yetkisiz yararlanma; özellikle;
20. Making unauthorized use of a business product such as an offer, account or plan entrusted to him,
21. To benefit from a work product such as a third party offer, account or plan, even though it is necessary to know that these have been delivered or provided to him without authorization,
22. Taking over and exploiting others' ready-to-market work products by means of technical reproduction without the appropriate contribution of his own.
23. Unlawfully revealing production and business secrets; In particular, the person who evaluates or informs others of the information that he secretly and unauthorizedly obtained or otherwise unlawfully learned and the business secrets of the producer will be acting against integrity.
24. Failure to comply with business terms; In particular, those who do not comply with the business terms that are imposed on competitors by law or contract, or that are usual in a profession or in the environment, act against honesty.
25. Using transaction terms contrary to the rule of honesty. against the other party, especially in a misleading way;
26. Significantly deviating from the legal regulation to be implemented directly or through interpretation, or
27. Those who use the pre-written general terms and conditions, which stipulate the distribution of rights and obligations that are significantly contrary to the nature of the contract, will be acting in violation of honesty.

## Legal liability

### Miscellaneous Cases

Article 56 – A person whose customers, credit, professional reputation, commercial activities or other economic interests are damaged or may face such a danger due to unfair competition;

1. Determining whether the act is unfair or not,
2. Prohibition of unfair competition,
3. Elimination of the material situation that is the result of unfair competition, correction of these statements if unfair competition is made with false or misleading statements, and if it is inevitable to



prevent infringement, the destruction of tools and goods that are effective in the processing of unfair competition,

4. Compensation for damage and loss if there is a fault,
5. Giving moral compensation in the presence of the conditions stipulated in Article 58 of the Turkish Code of Obligations, may request. In favor of the plaintiff and as compensation in accordance with subparagraph (d), the judge may also decide on the compensation for the benefit deemed possible by the defendant as a result of unfair competition.
6. Customers whose economic interests are damaged or who may face such a danger can also file the lawsuits in the first paragraph, but cannot demand the destruction of vehicles and goods.
7. Chambers of commerce and industry, chambers of tradesmen, commodity exchanges and other professional and economic unions authorized to protect the economic interests of their members according to their statutes, as well as non-governmental organizations and public institutions protecting the economic interests of consumers according to their statutes are also subject to the provisions of the first paragraph (a), (b) and (c) can open the cases written in subparagraphs.
8. The judgment rendered against a person pursuant to subparagraphs (b) and (c) of the first paragraph shall also be enforced on persons who have obtained the goods subject to unfair competition directly or indirectly from him for commercial purposes.

### **Employer's Responsibility**

**Article 57** – (1) If the act of unfair competition is committed by the employees or workers while they are performing their services or jobs, the lawsuits written in subparagraphs (a), (b) and (c) of the first paragraph of Article 56 can also be brought against the employers.

The provisions of the Turkish Code of Obligations shall apply to the lawsuits written in subparagraphs (d) and (e) of the first paragraph of Article 56.

Responsibility of press, broadcasting, communication and information institutions

**Article 58** – If unfair competition is committed through all kinds of press, broadcasting, communication and information enterprises and institutions that will become operational as a result of future technical developments, the lawsuits written in subparagraphs (a), (b) and (c) of the first paragraph of Article 56, however, what is published in the press, the program; what is displayed on the screen, computer or similar media; may be filed against the owners of the audio broadcast or any other means of transmission, and against the persons who place advertisements; However;

1. If the thing, program, content, image, sound or message published in the printed media has been published without the knowledge of their owners or the advertiser or contrary to their approval,
2. If it is avoided to notify who is the owner of the thing, program, image, sound or message published in the printed media or who is the advertiser,
3. If, due to other reasons, it is not possible to reveal the owner of the thing, program, image, sound, message or advertiser or to file a lawsuit against them in a Turkish court,
4. the above-mentioned cases, the editor-in-chief, the editor-in-chief, the program producer, the person who puts or has put the image, sound, message on the broadcast, communication and information tool, and the chief of the announcement service; If these cannot be displayed, they can be filed against the owner of the business or establishment.
5. Except for the cases stipulated in the first paragraph, in case of fault of one of the persons listed in the same paragraph, a lawsuit may be filed regardless of the order.
6. The provisions of the Turkish Code of Obligations are applied in the cases written in subparagraphs (d) and (e) of the first paragraph of Article 56.
7. The lawsuits in the first paragraph of this article cannot be brought against the service provider if he has not initiated the transmission of the act of unfair competition, has not chosen the recipient of the transmission or the content constituting the act, or has not changed it to carry out the act; an injunction cannot be made. In cases where the negative consequences of the unfair competition act are extensive or the damage will be great, the court may also listen to the relevant service provider and take the injunction decision regarding the termination or prevention of the unfair competition act against the service provider, or take other applicable measures, including the temporary removal of the content, in accordance with the concrete case.

### **Announcement of the Decision**

**Article 59** – At the request of the winning party, the court may also decide to announce the verdict after the finalization of the judgment, with the expense of being collected from the party who proved wrong. The court determines the form and scope of the announcement.

## Timeout

**Article 60** – The lawsuits written in Article 56 become statute of limitations, one year from the day the party entitled to the action learns of the birth of these rights, and in any case three years from their birth. However, if the act of unfair competition is also a criminal act that is subject to a longer statute of limitations in accordance with the Turkish Penal Code dated 26/9/2004 and numbered 5237, this period is also valid for civil lawsuits.

1. VI – Precautionary measures
2. **ARTICLE 61** – (1) Upon the request of the person who has the right to file a lawsuit, the court decides to protect the current situation as it is, to eliminate the material situation resulting from unfair competition as stipulated in subparagraphs (b) and (c) of the first paragraph of Article 56, to prevent unfair competition and may decide on the correction of false or misleading statements and other measures in accordance with the provisions of the Code of Civil Procedure on interim injunction.
3. In addition, the goods subject to unfair competition, which requires punishment in case of infringing on the rights of the right holder, may be seized by the customs administrations as a precautionary measure upon the request of the right holder during import or export.
4. The practice regarding seizure is subject to the legislation on this subject.
5. If a lawsuit is not filed in the relevant court on the merits or a precautionary decision is not taken from the court within ten days following the notification of the injunction or seizure decision in the customs administrations, the seizure decision of the administration shall be nullified.

## Criminal Liability

### Acts that Require Punishment

#### Article 62 –

1. Those who deliberately commit one of the acts of unfair competition stated in Article 55,
2. Those who deliberately give false or misleading information about their personal situation, products, business products, commercial activities and businesses in order to prefer their own offers and offers to those of their competitors,
3. Those who deceive employees, proxies or other assistants in order to enable the employer or their clients to seize the production or trade secrets,
4. Those who learn from their employers or clients that their workers or employees or their proxies have committed an unfair competition act that necessitates a penalty while doing their job, and those who do not prevent this act or correct false statements,
5. If the act does not constitute another crime that requires a heavier penalty, upon the complaint of one of those who have the right to file a civil lawsuit pursuant to Article 56, they are sentenced to imprisonment of up to two years or a judicial fine for the acts falling within the scope of each subparagraph.

## Criminal Liability of Legal Persons

**Article 63** – If an act of unfair competition is committed during the performance of the legal entities, the provision of Article 62 shall apply to the members or partners of the body acting on behalf of the legal entity or required to act. In the event that the act of unfair competition is committed within the framework of the activity of a legal person, specific security measures may also be decided on the legal person.

3.2. The regulation in the Turkish Code of Obligations Unfair competition is regulated in Article 57 of the Turkish Code of Obligations. According to the provision, “a person who has fewer customers or faces the danger of losing them due to the dissemination of untrue news or the making of such advertisements or other acts contrary to the rules of honesty may

request an end to these behaviors.” According to the TCO, two conditions must be met for an act to be considered unfair competition. The first of these is the making of false advertisements or acts contrary to the rule of honesty; The second is that the person who is exposed to these acts is faced with the danger of losing their customers or losing their customers. According to the Code of Obligations, when these two conditions coexist, it can be accepted that the act of unfair competition has been committed (Oruc, 2009).

## CONCLUSION

The regulation in the old Turkish Commercial Code regarding unfair competition was made by considering the commercial and economic relations of the 1950s. With the passage of time, fundamental changes in economic and commercial life have made a new arrangement necessary. Considering the elapsed time and developments, it would not be wrong to say that it is too late for the said regulation. With the new Turkish Commercial Code, fundamental changes were made in the provisions regarding unfair competition. The new regulation on unfair competition, unlike the old regulation, has expanded the regulation by saying only participants instead of competitors. What is meant by this expansion is that it also mentions the influence of the relationships between suppliers and customers by pointing to the interests of the participants. Considering the difficulties in today's commercial life and how the struggle has become difficult, it is obvious that the competition is not only between competitors. To put it more accurately, when we consider that unfair competition goes beyond just influencing competitors and affects all participants, it is clear that this regulation is appropriate and appropriate.

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