

Unfair Competition and Unfair Commercial Practices in the Online Environment of Social Networks

Abstract (ENG)

The aim of this master's thesis is to analyse applicable law relating to the phenomenon of surreptitious advertising occurring in the posts published by influencers on social networks, examined in the scope of Czech law against unfair competition and unfair commercial practices. The author also aims to describe the particulars of the proper indication of advertising nature of such posts.

The introductory part of this thesis covers general legal provisions on unfair competition and unfair commercial practices (with regard to the European law influence) and legal regulation of social networks. Analysed in detail are the general clause of unfair competition, denominate (special) and innominate (judicial) merits of the cases of unfair competition and the means of protections against unfair competition. Unfair commercial practices are characterised by examination of the general clause, small general clauses and the blacklist of unfair commercial practices. Social networks are introduced generally as information society services and audiovisual media services, and then afterwards three selected social networks – Facebook, Instagram and YouTube – are broadly characterised; the relationship between the respective networks and their users is also observed.

The next part of the thesis focuses on detailed examination of surreptitious advertising on social networks as an unfair dealing. The author concludes that, considering the non-existence of a general definition of surreptitious advertisement in the Czech law, such dealing comes within (and is to be sanctioned as) the small general clause of misleading omission, as enacted in the Consumer Protection Act. Furthermore, surreptitious advertising can also be assessed and penalised as unfair competition, more specifically as misleading advertising (subject to the fulfilment of the conditions of general clause of unfair competition). In the conclusion of this part, the Czech advertising market self-regulation instruments are described, both universal (activities of the Czech Advertising Standards Council) and specifically related to the scope of surreptitious advertising on social networks (the „Fair advertisement” project).

The concluding part of this thesis first focuses on the presence of surreptitious advertising on the three selected social networks, whereas options for labelling advertising within these networks are laid down, which are also demonstrated on the practical examples annexed thereto. Subsequently, the author analyses two studies conducted for the Faculty of

Social Sciences of the Charles University, concerning a perception of surreptitious advertising on social networks by the Czech children and marketing professionals. Lastly, the foreign decisional practice in the field of surreptitious advertising on social networks is discussed, in particular the practice of the German civil courts and of the British advertising regulator Advertising Standards Authority.

Key words: unfair competition, unfair commercial practices, social networks, surreptitious advertising, influencer marketing