

Online Advertising Specifics with regards to Unfair Competition Law

Abstract

This thesis analyses advertising which is strictly connected to the internet environment with regards to the unfair competition law. The importance of unfair competition regulations in the dynamic internet environment is emphasized by presenting the most problematic areas of online advertising. The great flexibility of the general clause is often the only possible way how to prosecute the new methods of online advertising.

Due to the insufficient development of the Czech jurisprudence in online advertising, there are judgments of the European Court of Justice and the judgments from other member states presented in this thesis. There are detailed analyses of six different advertising practices - keywords abuse, metatags abuse, linking, fake online reviews, advertisements on online platforms, and ad blocking software. The main goal of the paper is to draw the limits of these six advertising practices by analysing and comparing various fact patterns in foreign judgments. Some of the judgments presented in the thesis are introduced in the Czech legal environment for the first time.

Furthermore, the thesis focuses on the specifics which distinguish online advertising from the traditional ones. The specific characteristics of internet advertising are one of the main reasons for the need to redefine some of the traditional legal terms - such as the term advertisement. In this regard, I present the legal argument of the European Court of Justice in favor of the extensive interpretation of advertising. Due to its consistent extensive interpretation keywords abuse, metatags abuse, hyperlinks and fake reviews might also be considered an advertisement and therefore covered under legal regulations.

Additionally, the issue of identification of the wrongdoer in internet disputes and the passive legitimation of internet search engines and other internet platforms are discussed as well. The thesis also analyses various different relationships on the internet, such as business to customer, business to business or even business to platform. Last but not least, the new amendment of the European Unfair Commercial Practices Directive is covered as well.