



Handling of Violations of the Law on Unfair Competition in Vietnam

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ABSTRACT

In the market, many enterprises perform unethical and unconventional competitive acts in order to weaken their competitors. These acts need to be restrained and prevented to protect the competitiveness of other enterprise and create a healthy competitive environment. Therefore, it is necessary to have laws on unfair competition to regulate such acts. The Law is an effective tool that the state uses to intervene and regulate competition effectively. Vietnam enacted the Competition Law in 2004, which was later replaced by the Competition Law in 2018. The article analyzes the provisions of Vietnamese law on acts of unfair competition and the handling of violations of the law on unfair competition in Vietnam.

Keywords: *competition, unfair competition, law*

1. Introduction

Competition is the driving force behind economic development. The purpose of competition is to sell many goods and services. To achieve that, the business may implement dishonest commercial practices. That behavior negatively affects other businesses, consumers and by extension the economy. That is the act of unfair competition. Unfair competition is competition based on the loophole of the law, contrary to social norms, so it is condemned by society.

In Vietnam, the provisions of the law on unfair competition acts are concentrated in the Competition Law 2018. These regulations contribute to making the business environment "cleaner". However, in fact, there are still many cases of unfair competition.

2. Theoretical basis

2.1. The concept of competition

From an economic perspective, competition is understood as the rivalry or race between members of a specific commodity or product market in order to attract more and more customers, markets and market shares. According to this understanding, competition can be approached on a large scale (international scope: competition between countries, between industries) or narrower (between producers and business people).

From a philosophical perspective, competition is the contradictory manifestation of opposites in economics and therefore, overall, it is considered one of the driving forces of social economic movement and development.

From a legal perspective, competition is understood as the legal acts of independent business entities in a certain market for goods and services (rice market, iron market, steel market... within the scope of the national economy or a locality), in order to gain advantages over other business competitors in transactions with customers.

2.2. The concept of unfair competition

Currently, there are 03 concepts of unfair competition in the world:

Conception 1: "Unfair competition includes all acts that infringe on competitive activities in the market, infringe on the freedom of fair competition of enterprises". This concept is very clearly reflected in the provisions of the Mongolian Competition Law. In this view, the range of acts considered unfair competition is very wide. This will make it difficult to apply the law.

Conception 2: Expressed in Article 10bis of the Paris Convention for the Protection of Industrial Property, according to which: "any act contrary to honest actions, goodwill in industry or in trade is unfair competition". This concept is limited to acts of "dishonesty and goodwill" in "industrial or commercial" activities.

Conception 3: "Unfair competition is the competitive behavior of enterprises in the business process contrary to the usual standards of business ethics, causing damage or may cause damage to the interests of the State, the legitimate rights and interests of other business entities or consumers". This conception reconciles the limitations of the two concepts above. According to this concept, competition is not only in the field of industrial property as in the second concept, but also extends to other fields.

Vietnam's concept of unfair competition is built according to concept 3: "*Unfair competition is an act of an enterprise that is contrary to the principles of goodwill, honesty, commercial practices and other standards in business, causing damage or may cause damage to the legitimate rights and interests of other enterprises.*" (Clause 6, Article 3 of the Vietnam Competition Law 2018).

2.3. Impact of unfair competition behavior

Unfair competitive behaviors impact businesses, consumers, and the economy.

For enterprises, unfair competitive behavior causes the normal production and business activities of genuine enterprises to be suspended, ruined, financially damaged, market share to decline, and even larger, they may go bankrupt or be acquired.

For consumers, unfair competitive behavior causes them to lose trust in products and businesses and become increasingly hesitant and suspicious of all types of products on the market, unable to distinguish between real and fake.

For the country's economy, when an enterprise conducts unfair competitive activities, it can cause great damage to the enterprise itself, causing the business's revenue to decrease. Thus, the State loses tax revenues, thereby affecting the country's economy. The implementation of unfair competition practices can also cause the quality of goods and services to be reduced, affecting the reputation of enterprises in the international market, making it difficult for enterprises to export goods. On the other hand, unfair competition in the country creates a bad mentality for foreign investors when they want to invest, thereby affecting the attraction of foreign investors.

3. Research method

The article uses the method of document research, analysis - synthesis, comparison of the provisions of the law on competition. Data in the Annual Report 2019, 2020, 2021, 2022 of Vietnam Competition and Consumer Authority under the Ministry of Industry and Trade of Vietnam is used to assess the situation of handling violations of the law on unfair competition in Vietnam.

4. Research result

4.1. Unfair competition behaviors are prohibited in Vietnam

Vietnamese law stipulates 6 prohibited acts of unfair competition, including:

(1) *Violation of confidential information in business (Clause 1, Article 45 of the Vietnam Competition Law 2018).*

Infringement of confidential information in business is carried out in the following ways: "*a) Accessing and collecting confidential information in business by resisting security measures of the owner of such information; b) Disclosing and using confidential information in business without the permission of the owner of such information*".

In a competitive business environment, businesses always have important information. Including information related to the existence of the business to obtain its own advantages in business. This information is always kept private and is considered a "trade secret". Trade secrets can be considered "weapons" of the business. If it is disseminated or compromised, the business will no longer have its own advantages.

Competitors often find ways to access this information such as bribing or hiring key employees of the business. These are the people who have created or gained access to confidential information that is giving the business a competitive advantage. To prevent the decline or loss of competitive advantage provided by this information, a successful company must protect its assets or confidential information.

Types of information that are trade secrets often include: information related to a formula, sample, equipment; technical information used in the production of goods; marketing, export or sales strategies; business management processes and procedures, including software used for business activities; business plan, business process; key customer list, list of trusted or special suppliers; description of product specifications, product features, raw material purchase price, test data, technical sketches or drawings, manufacturing specifications, work proprietary cooking, calculation formulas; contents of the laboratory notebook, salary structure of the company, product prices and spending levels for advertising activities, source code, machine code, database and electronic data collection, contracts containing details of market constraints, advertising or marketing materials being implemented...

(2) *Acts of forcing customers and business partners of other enterprises (Clause 2, Article 45 of the Vietnam Competition Law 2018).*

The act of forcing customers or business partners of another enterprise is the act of *threatening* or *forcing* customers or business partners of another enterprise to force them not to transact or stop transacting with that enterprise.

Coercive behavior in business infringes on the freedom of others to do business because in the market economy, businesses have the right to do business freely and customers are "gods" have the right to choose, decide in the purchase and sale of goods and use services. Such coercive transactions lack the discretion of one of the parties, and they may be declared void.

Often, coercive business behavior is the behavior of enterprises with a dominant position or a special advantage in their relationship with customers. This intimidation, coercion is also one of the prerequisites for invalid trading. The subject of coercive business conduct may be a business owner, an employee of the business or any other individual for the purpose of unfair competition. The demonstration of the motive, purpose and mastermind of these acts is the basic condition for being able to conclude whether the subject has violated the provisions on unfair competition or not.

(3) The act of providing untruthful information about other enterprises (Clause 3, Article 45 of the Vietnam Competition Law 2018).

The act of providing dishonest information about another enterprise is done by *directly* or *indirectly* providing dishonest information about the enterprise that adversely affects the reputation, financial condition or business operations of that enterprise.

Providing dishonest information about another business is a relatively common act in business activities to eliminate competitors or inhibit the business development of competitors by reducing the number of customers using its products. This behavior manifestes in many different forms, which can range from simple to complex, direct or indirect. Businesses can directly communicate with customers verbally, in writing, or can also provide information indirectly through a third party to customers. The content given is very diverse such as product quality, financial situation, prestige and ethics of managers, stock... This information affects the perception and evaluation of customers and consumers about products and services as well as the business situation of other businesses.

The consequences of the act are to adversely affect the reputation, financial status and business activities of the enterprise. The decrease in reputation leads to a decrease in transactions, a decrease in sales, a decrease in the number of customers.

(4) Acts of disrupting the business activities of other enterprises (Clause 4, Article 45 of the Vietnam Competition Law 2018).

Acts of disrupting the business activities of other enterprises are done by *directly* or *indirectly* obstructing or disrupting the lawful business activities of such enterprises.

Activities that obstruct or disrupt business activities conducted by enterprises, whether directly or indirectly, aimed at their competitors will be considered as manifestations of unfair competitive behavior. For example, acts of interfering with communication systems, malfunctioning power sources for production and business, designing and arranging obstacles, sources of pollution... at locations and business establishments of competitors can all disrupt the business activities of other enterprises.

(5) Acts of illegally luring customers (Clause 5, Article 45 of the Vietnam Competition Law 2018).

Acts of illegally luring customers are carried out in the following forms:

"a) Providing false or misleading information to customers about enterprises or goods, services, promotions, transaction conditions related to goods and services provided by enterprises in order to attract customers of other enterprises; b) Comparing their goods and services with goods and services of the same type of other enterprises but failing to prove the content."

Regarding the act of giving false or misleading information to customers about businesses or goods, services, promotions, transaction conditions related to goods and services provided by enterprises in order to attract customers of other enterprises. The manifestation of this behavior is that the enterprise's use of instructions containing misleading information about trade names, business slogans, business symbols, packaging, agency instructions... distorts customers' perception of goods and services for competitive purposes; acts of trading products using misleading instructions. With this behavior, the violating enterprise has caused customers to confuse their products with those of other enterprises by using instructions containing information that distorts the customer's perception, making them unable to distinguish the products of the violating enterprise from the confused products.

In terms of promotional behavior for unfair competition, Promotion is one of the commercial activities applied by many businesses in order to attract customers to use their goods and services. However, many businesses take advantage of this form of trade promotion to compete and eliminate competitors in an unhealthy way. For example, promotions that lie about prizes (violators give false information about prizes, awards that are not in accordance with the commitments, announced in the promotion rules or information, advertising before the promotion). This act has the nature of unjustly enticing consumers to participate in the promotion program); promotion is dishonest or misleading about goods and services to deceive customers (the violating party is dishonest in the process, how to perform the promotion with different forms such as giving gifts, organizing competitions with prizes or lucky programs...).

The act of "comparing one's goods or services with those of the same type of other enterprises but cannot prove the content". This behavior is often done by businesses when advertising, called comparative advertising. This is an act performed by business entities in the market for profit. This behavior is of an opposing nature, contrary to business practices and ethical principles. The consequence of the act is to cause damage or potentially damage to other entities, especially affecting consumers - the "weaker" object in accessing product information.

(6) The act of selling goods and providing services below the total cost leads to or is likely to lead to the elimination of other enterprises trading in that type of goods and services (Clause 6, Article 45 of the Vietnam Competition Law 2018).

According to [Article 4 of the 2012 Law on Vietnamese Prices](#), the total cost of goods and services is the cost of consumption of goods and services, including: "a) The cost of production of goods and services; the purchase price of goods and services for organizations and individuals engaged in commercial activities; b) The cost of circulation to bring goods and services to consumers."

The price that enterprises set for the goods and services they provide is always governed by three factors: the law of supply and demand, production costs and the pricing strategy of enterprises. In certain market conditions, in order to eliminate competitors, enterprises have many ways including selling goods and providing services below the entire cost.

The act of selling goods or providing services below the entire cost is considered as the act of the enterprise pricing at a low level, thereby aiming to eliminate competitors from the relevant market.

4.2. Handling violations of the law on unfair competition in Vietnam

In Vietnam, the handling of violations of the law on unfair competition is carried out by the Competition and Consumer Authority. This is an agency under the Ministry of Industry and Trade, with the function of enforcing competition law and consumer protection law with the goal of ensuring a healthy competitive environment, creating equal opportunities for enterprises to participate in the market and protecting the legitimate rights and interests of consumers. One of the tasks that the Competition and Consumer Authority is working to implement is to limit and eliminate unfair competition to ensure the interests of businesses and consumers. Since the 2018 Competition Law took effect (July 1, 2019), Vietnam Competition and Consumer Authority has sanctioned many cases of unfair competition.

* In 2019:

In 2019, the Competition and Consumer Authority issued a decision to sanction 04 cases conducting investigations in 2018 related to unfair competition acts in the form of misleading instructions, handling according to competition procedures 01 case related to violations in multi-level marketing activities with a total fine of VND 261.25 million. The Department received 22 new complaints related to unfair competition. However, after reviewing the content of the complaint, the Department returned the dossier because the complaining party could not provide evidence proving the violation of the complained party.

* In 2020:

In 2020, the Competition and Consumer Authority continued to receive many complaints from stakeholders about acts of violating regulations on unfair competition in the market. The Department received 11 cases in 2020 related to the following areas:

- Food and beer production (03 cases) related to the act of illegally luring customers (Article 45.5 – Competition Law 2018); Forcing customers and business partners of other enterprises (Article 45.2 – Competition Law 2018);
- Manufacture of electrical equipment, related to the act of providing untruthful information (Article 45.3 – Competition Law 2018) and disturbing the operations of other enterprises (Article 45.4 – Competition Law 2018);
- Real estate agent, illegal customer attraction (Article 45.5- Competition Law 2018);
- Beauty services, related to the act of illegally luring customers (Article 45.5 – Competition Law 2018);
- Online business, related to the act of illegally luring customers (Article 45.5 – Competition Law 2018);
- Cosmetics, related to the act of illegally luring customers (Article 45.5 – Competition Law 2018);
- Animal feed, related to the act of providing untruthful information about other enterprises (Article 45.3 – Competition Law 2018);
- Machine building (02 cases), related to infringement of trade secret information (Article 45.1 – Competition Law 2018), illegally luring customers (Article 45.5 – Competition Law 2018).

Table 1. Unfair competition case received by the Competition and Consumer Authority in 2020

Area	Quantity	Behavior Type
Food, beer production	3	Illegally luring customers; forcing customers and business partners of other enterprises.
Manufacture of the electrical equipment	1	Providing dishonest information and disrupting the operations of other businesses.
Real estate Agent	1	Enticing nefarious customers
Beauty services	1	Enticing nefarious customers
Online business	1	Enticing nefarious customers
Cosmetics	1	Enticing nefarious customers
Animal feed	1	Providing dishonest information about another business.
Machine building	2	Infringement of trade secret information; enticing nefarious customers.
Total	11	

Source: Compiled from the 2019 Annual Report of the Competition and Consumer Authority

Although at the end of 2020, the Competition and Consumer Authority was unable to conduct the investigation and handling according to competition procedures under the Competition Law 2018 (because the Decree stipulating the structure, functions and duties of the National Competition Commission has not been issued), the Department still received complaints and complaints of related parties related to acts of violating competition law to clarify the case and make necessary recommendations to prevent unfair competition acts from taking place in the market and consolidate the dossier for handling after the National Competition Commission was established.

** In 2021:*

In 2021, the Competition and Consumer Authority continued to receive many complaints from stakeholders about acts of violating regulations on unfair competition in the market. The Competition and Consumer Authority has made recommendations related to disputes related to the act of restricting the distribution of publications on the beer market between Saigon Beer - Alcohol - Beverage Co., Ltd. and Heineken Vietnam Brewery Co., Ltd. in order to warn and advise enterprises in the field of beer production and business to strictly comply with the law on competition, review and eliminate business policies showing signs of violating the law on competition and protecting consumers' interests. The Department proactively reviewed advertising information of some products on the market with information related to the harmful effects of Coro-na virus and advertised a number of drugs and functional foods with signs of exaggeration and overstatement of product uses (a total of 15 cases). Although the Department has not been able to conduct the investigation and handling according to the competition procedures under the Competition Law 2018 (because the Decree regulating the structure, functions and tasks of the National Competition Commission has not been issued), the Department still receives complaints and complaints related to acts showing signs of violating the competition law to clarify the incident and make necessary recommendations to prevent unfair competition.

** In 2022:*

In 2022, the Competition and Consumer Authority received and reviewed 8 reflections related to signs of unfair competitive behavior; proactively reviewed and considered 06 cases related to unfair competitive behavior. Unfair competition cases in 2022 occurred in areas such as cosmetic advertising, refrigeration electronic equipment advertising, hammock business, construction materials business, seaport services, tourism transportation services and especially cases of cross-border nature, disputes occurring in the online environment. the Competition and Consumer Authority has requested related parties to provide information, documents, organize work with related parties, make written recommendations to the parties to comply with the competition law in some cases.

5. Comments and recommendations

Vietnam has issued the Competition Law 2018, which officially took effect on July 1, 2019, regulating competition, including unfair competition behaviors. The provisions of the Competition Law 2018 are built based on the goal throughout of "Creating, maintaining and ensuring an unfair and equal competitive environment among enterprises in the market, thereby enhancing market access, effectively allocating resources, improving economic efficiency, social welfare and protecting consumers' interests". In order for the provisions of the Competition Law to really come to life, promote the mission of protecting a fair and healthy competitive environment, as a driving force for economic development, it is necessary to study and improve it.

Firstly, perfecting the concept of "unfair competitive behavior"

Clause 6, Article 3 of the Vietnam Competition Law 2018 stipulates that "Unfair competition acts are acts of enterprises contrary to the principles of goodwill, honesty, commercial practices and other standards in business, causing damage or may cause damage to the legitimate rights and interests of other enterprises". The approach to unfair competition under this regulation is basically consistent with international law. Clause 2, Article 10bis of the Paris Convention for the Protection of Industrial Property Rights provides that "Acts of unfair competition are all acts contrary to honest practices in the field of industry or commerce". However, the new concept of limiting the consequences of this act to "damage or possibly damage the legitimate rights and interests of other enterprises" is not enough, not consistent with the nature of the act, but it is necessary to expand the damage or may cause damage to the legitimate rights and interests of "consumers". In other words, Vietnam's concept of unfair competition has not fully covered the object of damage or possible damage caused by unfair competition.

Secondly, it is necessary to agree on regulations on unfair competition in different legal documents

In Vietnam, there are many documents with the same regulations on unfair competition practices (Competition Law, Commercial Law, Advertising Law, Law on protection of consumers' rights, Pharmacy Law, Price Law, Intellectual Property Law...) causing difficulties in the application process. Unfair competition practices are regulated in a variety of documents, enforced by different state management agency resulting in overlap of jurisdiction or extortion of responsibilities between law enforcement agencies. Specifically, acts of unfair competition in the field of intellectual property are stipulated in the Law on Intellectual Property, acts of advertising for unfair competition are stipulated in the Law on Advertising, acts of promotion are stipulated in the Law on Trade...Therefore, it should be reviewed to regulate accordingly.

It is necessary to clearly define the relationship between the Competition Law and other legal documents when jointly regulating unfair competition practices. In particular, the Competition Law sets out the basic principles for the identification of acts and dealing with unfair competition practices. Other legal documents, when regulating acts of unfair competition in specific fields must comply with these principles. Other legal documents detail and supplement the Competition Law on acts of unfair competition in specific fields.

For example, unfair competition in the field of advertising is currently not only governed by the Competition Law but also regulated by many legal documents such as Commercial Law, Advertising Law, Law on protection of consumers' rights, Pharmacy Law, Price Law, Intellectual Property Law...

causing overlap in handling authority, pushing responsibility between law enforcement agencies, leading to great controversies on the social level due to the impact on different interest groups.

Thirdly, considering increasing penalties for unfair competition practices.

The level of sanction for unfair competition is still low compared to the benefits obtained by the enterprise, so it is not enough to deter. In fact, unfair competitive practices can bring huge benefits to businesses, far more than the amount of fines they incur. Meanwhile, the current maximum fine is 1 billion VND for the act of selling goods or providing services below the entire cost, leading to or potentially leading to the elimination of other enterprises trading the same type of goods and services. Therefore, it is necessary to consider penalties and sanctions for unfair competition acts to ensure deterrence and prevent the continuation of violations.

The 2015 Criminal Code of Vietnam stipulates the criminal handling of some acts of unfair competition such as the crime of producing and trading counterfeit goods (Article 192), the crime of speculation (Article 196), the crime of false advertising (Article 197), the crime of deceiving customers (Article 198). However, there are many acts of unfair competition that other countries' laws stipulate are crimes but the Criminal Code of Vietnam has not stipulated, including acts of infringing on business secrets, industrial intelligence activities...

6. Conclusion

Competition always puts great pressure on each enterprise in the market. To fight competitors, maintain the existence, expand the market, make a lot of profit, businesses do not always use fair and healthy competition methods. In many cases, businesses are willing to use competitive tricks that are considered "bad", "not good" or in other words "unfair". Ensuring free and fair competition is considered an important solution to ensure a healthy business investment environment, serving the overall economic development of the country. This requires research to raise the awareness of social actors about combating unfair competition, from the development of laws to the implementation of laws and the protection of laws against unfair competition.

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