Reto M. Hilty
Frauke Henning-Bodewig
Editors

MPI Studies on Intellectual Property, Competition and Tax Law 1

Law Against Unfair Competition

Towards a New Paradigm in Europe?

Springer

Reto M. Hilty
Frauke Henning-Bodewig
(Editors)

Law Against Unfair Competition

Towards a New Paradigm in Europe?

Springer

Professor Dr. Reto M. Hilty
Dr. Frauke Henning-Bodewig
Max Planck Institute for Intellectual Property,
Competition and Tax Law
Marstallplatz 1
80539 Munich
Germany
hilty@ip.mpg.de
fhb@ip.mpg.de

Library of Congress Control Number: 2007929637

ISBN 978-3-540-71881-9 Springer Berlin Heidelberg New York

This work is subject to copyright. All rights are reserved, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilm or in any other way, and storage in data banks. Duplication of this publication or parts thereof is permitted only under the provisions of the German Copyright Law of September 9, 1965, in its current version, and permission for use must always be obtained from Springer. Violations are liable to prosecution under the German Copyright Law.

Springer is a part of Springer Science+Business Media

springer.com

© Springer-Verlag Berlin Heidelberg 2007

The use of general descriptive names, registered names, trademarks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

Production: LE-TEX Jelonek, Schmidt & Vöckler GbR, Leipzig
Cover-design: WMX Design GmbH, Heidelberg

SPIN 12045211 64/3180YL - 5 4 3 2 1 0 Printed on acid-free paper

Max Planck Institute for Intellectual Property, Competition and Tax Law

MPI Studies on Intellectual Property, Competition and Tax Law

Volume 1

Edited by

Josef Drexl
Reto M. Hilty
Wolfgang Schön
Joseph Straus

此为试读，需要完整PDF请访问：www.ertongbook.com

Preface

Unfair competition law is concerned with fair play in commerce. It is generally regarded as necessary – together with antitrust law – in order to steer competition along an orderly course, and thereby to contribute to promoting an efficient market system that serves the interests of all participants.

Nevertheless the significance of unfair competition law varies from one country to another. Whereas in some countries, such as Germany, it is seen as one of the most effective commercial laws, in other countries, such as the United Kingdom, it leads rather a shadowy existence.

From the outset, this discrepancy laid in the differences in national legal systems. Whilst those continental European countries that possessed a written civil law when instances of unfair competition emerged, more or less successfully attempted to incorporate them in the existing tort law system, protection in the common law countries was restricted to some narrowly defined torts, in particular "passing off". At this stage one of the few shared convictions was, that the protection of "honest entrepreneurs" was at issue; on this basis, in 1900, the only regulation at the international level until now was enacted, Art. 10^{bis} of the Paris Convention.

Yet even this foundation is increasingly fragile. The crucial factor is namely the controversial role of consumer protection in unfair competition law. Although the interest of consumers in the fairness of commercial practices was generally regarded as legitimate, the reaction to recognise this interest was quite different. Whilst some countries integrated this protection in their existing legal regulations against unfair competition – which thereby became a sort of "market law" – other countries continued to provide protection for competitors under tort law, and supplemented this by provisions on specific business practices, serving mainly consumers' interests.

Against this background it is not surprising that a comprehensive, coherent harmonisation at the level of the European Community has still not been successful. In 1984, a Directive on misleading advertising was accomplished, which was supplemented by comparative advertising in 1997; and there continues to be selective harmonisation by specific product and media regulations and a partial alignment of rights for the protection of intellectual property. Only in 2005 did an overarching regulation again succeed in the form of Directive 2005/29/EC, which concerns unfair commercial practices in general.

Yet at the same time the latter Directive clearly illustrates the shortcomings of previous European legal development, which can be attributed to the absence of a convincing legal foundation on which to base modern unfair competition law. Whilst, for instance, protection was initially focussed exclusively on competitors (and consumers merely as a reflex), the Directive on unfair commercial practices does exactly the opposite: it now only concerns protection of consumers in the so-called "B2C" relationship (and, at best, protection of competitors as a reflex).

There seems to be no rhyme or reason for this change of direction. Coupled with the enduring controversy about the principle of the country of origin and the Commission's "piecemeal approach" to regulation, it becomes evident that the founda-

tions of modern law against unfair competition urgently require detailed academic scrutiny.

It is striking that so far – to the extent that any debate taken place at all – the opinions of only a few EU Member States have primarily attracted attention. This state of affairs can no longer be justified since 2004 at the latest, however, at which point in time the EU increased from only 15 Member States to 25, and in the meantime even to 27. Yet, in drafting the European law, the opinions of the new Member States have still largely not been considered – even for the Directive on unfair business practices enacted in 2005.

The Max Planck Institute for Intellectual Property, Competition and Tax Law therefore held a conference in Budapest on 16–18 June 2005, entitled "The law against unfair competition in the new Member States: Impulses for Europe?". The conference addressed the special problems of the law against unfair competition in the new Member States and their effects on future Community law. Renowned scholars from several "old" Member States, as well as from almost all the new ones, were enlisted as speakers. The aim of the conference, alongside general issues, such as those concerning the interfaces between competition law and other fields of law, was particularly to contrast the regulatory approaches of all the Member States. The aspects that will be foremost at the European level in future could thus be elaborated in a joint discussion. This conference continued the theme of two earlier conferences held by the Max Planck Institute, namely the symposium "Competition law and consumer protection in Central and Eastern Europe" in 1991, and the Ringberg Conference "Reorganisation of competition law" in 1994.

Munich, January 2007

Reto Hilty Frauke Henning-Bodewig

List of Authors

Paolo Auteri	Prof. Dr. iur., Professor for Intellectual Property Law and Competition Law at the University of Pavia, Attorney at Law in Milan
Antonina Bakardjieva Engelbrekt	Dr. iur., LL.D., Associate Professor (Docent) in Civil Law, Stockholm University, Department of Law
Frauke Henning-Bodewig	Dr. iur., Head of Department at the Max Planck Institute for Intellectual Property, Competition and Tax Law, Munich
Jennifer Davis	Dr. iur., Newton Trust Lecturer in Intellectual Property Law in the Law Faculty, University of Cambridge, Fellow of Wolfson College, Cambridge
Judit Firniksz	Dr. iur., Head of the Consumer Section – Gazdasági Versenyhivatal (Hungarian Competition Authority)
Jochen Glöckner	Prof. Dr. iur., LL.M. (USA), Professor for German and European Private and Commercial Law at the University of Constance
Peter Grilc	Prof. Dr. iur., Professor of Competition Law and EU Law, University of Ljubljana
Petr Hajn	Prof. Dr. iur., Professor of Commercial Law, Faculty of Law, Masaryk University, Brno
Reto Hilty	Prof. Dr. iur., Director at the Max Planck Institute for Intellectual Property, Competition and Tax Law, Munich, Professor at the University of Zurich
Marcus Höpperger	Acting Director, Law and International Classifications Division, Sector of Trademarks, Industrial Designs and Geographical Indications, WIPO, Geneva
Vytautas Mizaras	Dr. iur., LL.M., Associate Professor and Head of the Department of Civil Law and Civil Procedure at the Faculty of Law of the Vilnius University, Lithuania

Wolfgang Schuhmacher	Prof. Dr. iur., Department of Labour Law, Commercial Law and European Law at the Law Faculty of Salzburg
Martin Senftleben	Dr. iur., Associate Officer, Law Section, Sector of Trademarks, Industrial Designs and Geographical Indications, WIPO, Geneva
Anton Škreko	Dr. iur., Researcher at the Faculty of Law of Trnava University in Trnava, Department of Civil and Commercial Law
Ryszard Skubisz	Prof. Dr. iur., Chair of the Jean Monet European Union Law Department at the Faculty of Law and Administration of the Maria Curie-Sklodowska University of Lublin, Poland
Jules Stuyck	Prof. Dr. iur., Professor of European and Economic Law at the K.U.Leuven and of European Law at the R.U. Nijmegen; Visiting professor at the CEU (Budapest)
Janusz Szwaja	Prof. Dr. iur., Jagiellonian University of Crakow, Poland

Table of Contents

此为试读,需要完整PDF请访问: www.ertongbook.com

The Law Against Unfair Competition and Its Interfaces

*Reto M. Hilty**

1. Point of Departure: Competition Law in Its Widest Sense

In a constitutional state ("Rechtsstaat"), committed to liberal values, the intervention of the legislator in the market forces of free competition requires a specific justification.[1] Economically speaking, this justification rests on the consideration that,

* The author wishes to thank *Martin Pflüger*, Research Fellow at the Max Planck Institute for Intellectual Property, Competition, and Tax Law, for his valuable support, especially in document enquiry and analysis.

[1] On the same basis rest *e.g.* BEATER, "Unlauterer Wettbewerb" Sec. 12, note 31 *et seq.* (2002); SCHÜNEMANN, in: HARTE-BAVENDAMM & HENNING-BODEWIG (eds.), "Gesetz gegen den unlauteren Wettbewerb, Kommentar" Sec. 1, note 34 (2004), (*see also*, however, Sec. 1, notes 20 and 24, as well as Sec. 3, note 163 *et seq.*, extremely cautious concerning intervention by the State, this being substantiated essentially with regard to the alleged lack of knowledge concerning the effects of intervention in "the highly complex system as a whole"); SAMBUC, in: HARTE & HENNING, *ibidem*, Intro. F, note 206; KÖHLER, in: HEFERMEHL, KÖHLER & BORNKAMM (eds.), "Wettbewerbsrecht" Intro. to the Law Against Unfair Competition, note 1.33 (25th ed. 2007).

without any such intervention, a market failure would ensue after a certain period of time.[2]

At first sight, this justification – the intervention in competition to avoid a potential market failure – appears to differ from the justification for intellectual property rights. For intellectual property rights it is customarily accepted that, by granting time-limited exclusive rights (as granted, for example, to the holders of patents or copyrights) incentives are created, ultimately aimed at optimising the allocation of resources.[3] On closer scrutiny, however, such a perception is not convincing. This is so for two reasons:

- Firstly, the stated objectives very quickly become blurred when they are applied to practical constellations. The two lines of justification are thus less in the nature of two distinct theoretical approaches, but rather different gravitational fields for possible ways of economic argumentation. Concrete legal norms may be at a greater or lesser distance from the one or the other gravitational field. However, it would be wrong to conclude from this that different approaches to legal regulation would necessarily pursue functionally different aims. In this way, exclusive rights may not only create incentives for the production of something new, but they may also contribute towards avoiding a potential market failure (thus, for example, trade marks, because they substantially reduce the consumer search

---

[2] With regard to the topic of a market failure also *infra* 3.4; *cf.* for definitions of the concept of a market failure GABLER, "Wirtschaftslexikon" L-Z, Vol. 2 (12th ed. 1988); GEIGANT, HASLINGER, SOBOTKA & WESTPHAL (eds.), "Lexikon der Volkswirtschaft" (7th ed. 2000); DICHTL & ISSING (eds.), "Vahlens großes Wirtschaftslexikon" L-Z, Vol. 2 (2nd ed. 1993); *see also* with regard to the topic as a whole FRITSCH, WEIN & EWERS, "Marktversagen und Wirtschaftspolitik: mikroökonomische Grundlagen staatlichen Handelns" 81 (6th ed. 2005); following essentially the same approach BRÜNING, in: HARTE & HENNING (eds.), *supra* note 1, at Intro. F, note 127; *see also* GORDON, "Systemische und fallbezogene Lösungsansätze für Marktversagen bei Immaterialgütern," in: OTT & SCHÄFER (eds.), "Ökonomische Analyse der rechtlichen Organisation von Innovationen" 328 *et seq.* (1994) (related to US intellectual property law); by the same author, "Asymmetric market failure and prisoner's dilemma in intellectual property," 17 Dayton Law Review 853 *et seq.* (1991-1992); BERGH & LEHMANN, "Informationsökonomie und Verbraucherschutz im Wettbewerbs- und Warenzeichenrecht," 1992 GRUR Int. 591 (market failure as a result of an information deficit); in a similar context HUNTLEY & STEPHEN, "Unfair Competition, Consumer Deception, and Brand Copying: An Economic Perspective," 15 International Review of Law and Economics 448 *et seq.* (1995).

[3] This has been analysed much more thoroughly with regard to patent law than with regard to copyright law; for a fundamental treatment, *see* in particular MACHLUP, "Die wirtschaftlichen Grundlagen des Patentrechts," 1961 GRUR Ausl. 373 *et seq.*, 473 *et seq.*, 524 *et seq.*; also in detail with regard to the mechanisms in general – however, with a strong emphasis on physical property – LEHMANN, "Eigentum, geistiges Eigentum, gewerbliche Schutzrechte – Property Rights als Wettbewerbsbeschränkungen zur Förderung des Wettbewerbs," 1983 GRUR Int. 356 *et seq.*, in particular 360; similarly critical BEATER, "Nachahmen im Wettbewerb" 357 (1995); *see also* OPPENLÄNDER, "Die wirtschaftspolitische Bedeutung des Patentwesens aus der Sicht der empirischen Wirtschaftsforschung," 1982 GRUR Int. 598 *et seq.*, in particular 599. More recently *e.g.* KRAßER, "Patentrecht" 34, as well as 43 *et seq.* (5th ed. 2004); PRETNAR, "Die ökonomische Auswirkung von Patenten in der wissensbasierten Marktwirtschaft," 2004 GRUR Int. 776 *et seq.*

costs[4]). Conversely, as will be explained below,[5] specific incentives aimed at optimising the allocation of resources may also be created without granting exclusive rights.

- Secondly, the two (theoretically severable) lines of argumentation, i.e. the creation of incentives by means of exclusive rights, on the one hand, and the selective intervention of the legislator to avoid a market failure, on the other, by no means constitute opposites in a larger context; they rather function in an almost complementary manner. This is so because, in the final analysis, both are directed at optimising competition in a predefined desired form. This follows from the fact that competition should not be seen as a homogenous entity, but as a form of multilayered "state", entailing the most diverse facets.[6] One of these facets is, for example, competition between technologies, which as a whole may experience a significant encouragement exactly through the instrument of the law of patents – despite the fact that the individual patent (referring to the concrete invention) embodies an exclusive right.[7] Conversely, regulations genuinely pertaining to competition law may reinforce an individual position in competition and, in this way – at any rate selectively and functionally – approximate an exclusive legal position.

---

4 HUNTLEY & STEPHEN, 15 International Review of Law and Economics 448 *et seq.*, *see also* 452 (1995); for a fundamental treatment, *see* in particular LANDES & POSNER, "The Economic Structure of Intellectual Property Law" 167 *et seq.* (2003); correspondingly already by the same authors, "Trademark Law: An Economic Perspective," Vol. 30, No. 2 Journal of Law and Economics 265 *et seq.*, in particular 269 *et seq.* (Oct. 1978). *See also* COOTER & ULEN, "Law & Economics" 134 *et seq.* (4th ed. 2004); AKERLOF, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism," 84 Quarterly Journal of Economics 488 *et seq.* (1970); BERG & LEHMANN, 1992 GRUR Int. 588 *et seq.*, in particular 591.

5 *Infra* 4.3.

6 With regard to the nature of competition in particular *e.g.* KÖHLER, in: HEFERMEHL, KÖHLER & BORNKAMM, *supra* note 1, at Intro., note 1.23, in terms of which one deals with "an extremely complex set of facts which, on the one hand, presupposes certain circumstances so that it can take place and develop whatsoever, on the other hand, however, because of its manifold functions can be understood in terms of the most diverse aspects and in the light of different objectives". The concept of competition thus serves both the purpose of characterising the behavioural processes of various enterprises in a certain market and the relations inter se concerning them which arise therefrom and with the market partners on the opposite market side, as well as that of describing the market situation of a specific product including its substitute goods and characterising the organising principle dominating the economy as a whole.

7 With regard to the effect of encouragement through exclusive rights (in particular with regard to patent rights) KRAßER, *supra* note 3, at 34, 43 *et seq.* and 45 *et seq.*; LEHMANN, 1983 GRUR Int. 360; OPPENLÄNDER, 1982 GRUR Int. 599, 600 *et seq.*; PRETNAR, 2004 GRUR Int. 776 *et seq.*

This approach of complementary functions is, in fact, recognised by present-day commentators.[8] It prevents the drawing of artificial boundaries and, in this way, makes it possible to define competition law in its widest sense as the totality of all those legal instruments whose aim is to continuously approximate the actual behaviour of individual competitors in a constantly changing (i.e. dynamic) context to predefined target values. Competition law thus defined in its widest sense therefore constitutes the core of what will be termed "the law of market behaviour" ("Marktverhaltensrecht") here.[9]

It should be added that in a constitutional state ("Rechtsstaat"), committed not only to liberal values, but which also seeks to realise other socio-politically consolidated values, the stated target values need not only be of an economic nature. The law of market behaviour may, in fact, find its justification also in, for example, social

---

[8] Particularly clear KUR, "Funktionswandel von Schutzrechten: Ursachen und Konsequenzen der inhaltlichen Annäherung und Überlagerung von Schutzrechtstypen," in: SCHRICKER, DREIER & KUR (eds.), "Geistiges Eigentum im Dienst der Innovation" 23 *et seq.*, in particular 32 *et seq.* ("erosion of the limits of protective rights") (2001); by the same author, "A New Framework for Intellectual Property Rights – Horizontal Issues," 2004 IIC 1 *et seq.*, in particular 19; SAMBUC, in: HARTE & HENNING (eds.), *supra* note 1, at Intro. F, note 185 *et seq.*, 204 *et seq.*; by the same author, "Der UWG Nachahmungsschutz" note 35 *et seq.* (1996); KÖHLER, in: HEFERMEHL, KÖHLER & BORNKAMM (eds.), *supra* note 1, at Sec. 4 Law Against Unfair Competition, note 9.4; BEATER, *supra* note 1, at Sec. 1, note 71 (*cf.* with regard to the often inconcise approach of the courts, however, also note 76); WEIHRAUCH, "Der unmittelbare Leistungsschutz im UWG" 240 (2001); KELLER, "Der wettbewerbsrechtliche Leistungsschutz – Vom Handlungsschutz zur Immaterialgüterrechtsähnlichkeit," in: AHRENS, ET AL. (eds.), "FS Erdmann" 595 *et seq.* (2002); *see also* BEYERLEIN, "Ergänzender Leistungsschutz gemäß § 4 Nr. 9 UWG als „geistiges Eigentum" nach der Enforcement-Richtlinie (2004/48/EG)," 2005 WRP 1355, as well as generally WEBER, "Dritte Spur zwischen absoluten und relativen Rechten?," in: HONSELL ET AL. (eds.), "Aktuelle Aspekte des Schuld- und Sachenrechts, FS Heinz Rey" 591 *et seq.* (Zurich 2003). For a fundamental treatment in the context of antitrust law, *see* ULLRICH, "Lizenzkartellrecht auf dem Weg zur Mitte," 1996 GRUR Int. 565 *et seq.* ("The protective right is only a means to the end inherent in competition, a competence to act, which makes possible behaviour promoting competition, *i.e.* aimed at individually maximising profit, but it is not already an end, incentive or reward itself, neither as such nor as a system. ... [Intellectual property] ... permits ... only exploiting the forces of competition which may already be found in the market order." [translation]), as well as in particular also HEINEMANN, "Immaterialgüterschutz in der Wettbewerbsordnung" 619 *et seq.* (2002). *See* in this context also *e.g.* BGH, October 10, 1971, I ZR 12/70, 1972 GRUR 189 *et seq.* – *Wandsteckdose II.*

[9] Explanatory statement of the German Government to Sec. 1 of the Act Against Unfair Competition (BT-Drucks 15/1487) at 16; GLÖCKNER, "Europäisches Lauterkeitsrecht" 7 (2006); KÖHLER, in: HEFERMEHL, KÖHLER & BORNKAMM (eds.) *supra* note 1, at Intro., note 1.24 ("competition as a behavioural process"), as well as Sec. 1, note 43; by the same author, "Zur Konkurrenz lauterkeitsrechtlicher und kartellrechtlicher Normen," 2005 WRP 645 *et seq.*, in particular 646, 653; *see also* FEZER, "Modernisierung des deutschen Rechts gegen den unlauteren Wettbewerb auf der Grundlage einer Europäisierung des Wettbewerbsrechts," 2001 WRP 997. *See also* for a more precise definition of the concept of "a law of market behaviour", however, *infra* 5.2.

justice, cultural diversity or ecological sustainability.[10] In the following, the observation of these values is taken for granted as far as European law, which is presently being focused on, is concerned, without discussing the question whether the European Community actually has the necessary competence to implement these values at this point.

2. Definition of Topic: The Legal Protection of the Competitor

If the law of market behaviour is to be understood as a complete set of legal norms, this does not, of course, exclude defining specific fields forming part of the law of market behaviour, in which the objectives of statutory arrangements may quite legitimately vary, compared to those of other fields.[11] Nevertheless, it appears neither necessary nor reasonably possible to partition the law of market behaviour as an entirety into its separate fields in an abstract manner, for example, to draw a clear line between legal approaches to protect intellectual property on the one hand and competition on the other, since these fields overlap each other substantially, as will be shown later.[12] However, what is decisive against this background is not to loose sight of both the particularities of each field as well as its relations to other fields.

This finding becomes particularly important, if one looks for interfaces as presently required by the topic. In that respect, from the perspective of the law against unfair competition, two negative delimitations need to be made here, however, to define the topic more closely:

- The first one follows from the fact that the topic in the present context refers to "the law against unfair competition"; this gives rise to – at any rate in the tradition of those European states which know that term whatsoever – a counterpoint to antitrust law. Antitrust law covers those constellations in which individual com-

---

[10] *See also* FRITSCH, WEIN & EWERS, *supra* note 2, at 81; KÖHLER, in: HEFERMEHL, KÖHLER & BORNKAMM (eds.), *supra* note 1, at Intro., note 1.48; critical concerning "subjecting market results to norms" SCHÜNEMANN, in: HARTE & HENNING (eds.), *supra* note 1, at Sec. 3, note 163 *et seq.*: "Even if such a conflict concerning the objectives existed, it would have to be decided in favour of the freedom of competition, as prosperity not accompanied by freedom would be the democratically as well as ethically unacceptable alternative" (translation). Once a constitution or, at the European level, the EC Treaty lays down certain values, it will, however, be difficult to actually avoid ensuring that the law deriving therefrom is not directed at realising these values. This covers also competition law – as the core of the law of market behaviour – as long as this concentrates on the indispensable minimum (*cf.* also *supra* note 1) and freedom is not restricted beyond what is unavoidable. In so far, the conclusion to the deliberations of Schünemann cited here appears too simplistic.

[11] *Cf.* in this regard *infra* 5.1.

[12] *Infra* 4, in particular 4.3.

petitors are able, separately or jointly, to attain a position which severely challenges the functioning of competition.[13]

Such specific questions of antitrust law presently do not stand at the centre of the discussion. For, not only European antitrust law is comparatively very highly developed; also in the national law of EU Member States there already exists a far-reaching consensus, at least principally speaking, concerning the importance of a body of rules in the sphere of antitrust law. With a view to a European law of market behaviour as a whole this means that the component of an antitrust law essentially exists and that details related thereto need not to be discussed in the following.

It is, however, important not to loose sight of the interfaces between the various components of the law of market behaviour. In this regard, the interface between antitrust law and what is customarily termed "the law against unfair competition" is of interest in respect of the law of those states which regulate these two fields as a formal unit (e.g. Estonia[14], Hungary[15], Latvia[16] and Lithuania[17]). But also where there is a division into different enactments (or even with regard to the Common Law approach), this interface is of interest in a substantial respect in as far as it is possible to pursue coincident objectives with different components (for example, preventing market distortions).[18]

- Secondly, the component of the legal protection of consumers will not be discussed in depth at this point. Delimitation is more difficult here, however, as the national law of Member States reveals considerable structural differences with regard to the transformation of these requirements of European law. This already

---

[13] *Cf.* with regard to the interrelationship and the mutual dependence in particular *e.g.* KÖHLER, in: HEFERMEHL, KÖHLER & BORNKAMM (eds.), *supra* note 1, at Intro., note 6.11 *et seq.*; BRÜNING, in: HARTE & HENNING (eds.), *supra* note 1, at Intro. F, note 125; OHLY, in: PIPER & OHLY, "Gesetz gegen den unlauteren Wettbewerb, Kommentar" Intro. note 72 *et seq.* (4th ed. 2006); *cf. also* KÖHLER, 2005 WRP 645 *et seq.*, in particular 646 and 653; FEZER, *supra* note 9, at 999; GLÖCKNER, *supra* note 9, 204 *et seq.*

[14] KOITEL, "Neues im estnischen Kartellgesetz," 2002 WIRO 334 *et seq.*; as well as ENGELBREKT, in: HARTE & HENNING (eds.), *supra* note 1, at Intro. E, note 72 *et seq.*; HENNING-BODEWIG, "Unfair Competition Law" at 101 *et seq.*, with additional references, (2006).

[15] VIDA, "Anpassung des ungarischen Marken- und Wettbewerbsrechts an das Europarecht," 2001 WIRO 172 *et seq.*; as well as ENGELBREKT, in: HARTE & HENNING (eds.), *supra* note 1, at Intro. E, note 709 *et seq.*; HENNING-BODEWIG, *supra* note 14, at 157 *et seq.*, with additional references.

[16] In this regard *e.g.* EISFELD, "Lettisches Wettbewerbs- und Kartellrecht," 2004 WIRO 325 *et seq.*; as well as ENGELBREKT, in: HARTE & HENNING (eds), *supra* note 1, at Intro. E, note 330 *et seq.*; HENNING-BODEWIG, *supra* note 14, at 183 *et seq.*, with additional references.

[17] ENGELBREKT, in: HARTE & HENNING (eds.), *supra* note 1, at Intro. E, note 351 *et seq.*; HENNING-BODEWIG, *id.*, at 187 *et seq.*, with additional references.

[18] *Cf.* in this regard FEZER, in: FEZER (ed.), "Lauterkeitsrecht, Kommentar zum UWG" Intro. E, note 39 *et seq.*, in particular 41, Vol. 1 (2005); GLÖCKNER, *supra* note 9, at 216; KEßLER, "Vom Recht des unlauteren Wettbewerbs zum Recht der Marktkommunikation," 2005 WRP 1204 *et seq.*; OHLY, in: PIPER & OHLY, *supra* note 13, Intro. note 71 *et seq.*; *see also* the references in *supra* note 13.

此为试读,需要完整PDF请访问: www.ertongbook.com