

THE NEW EUROPEAN
LAW OF UNFAIR
COMMERCIAL
PRACTICES AND
COMPETITION LAW

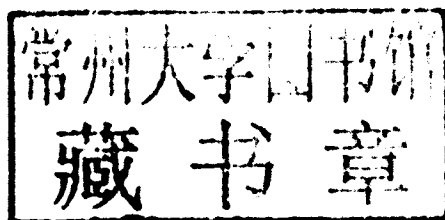
Bert Keirsbilck



• HART •
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The New European Law of Unfair Commercial Practices and Competition Law

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• H A R T •
PUBLISHING

OXFORD AND PORTLAND, OREGON

2011

Published in the United Kingdom by Hart Publishing Ltd
16C Worcester Place, Oxford, OX1 2JW
Telephone: +44 (0)1865 517530
Fax: +44 (0)1865 510710
E-mail: mail@hartpub.co.uk
Website: <http://www.hartpub.co.uk>

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA
Tel: +1 503 287 3093 or toll-free: (1) 800 944 6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Website: <http://www.isbs.com>

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address above.

British Library Cataloguing in Publication Data
Data Available

ISBN: 978-1-84946-184-9

Typeset by Criteria International
Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall

THE NEW EUROPEAN LAW OF UNFAIR COMMERCIAL PRACTICES AND COMPETITION LAW

Since 2005 the law of unfair commercial practices has undergone a revolution. This book presents the first comprehensive and critical examination of Directives 2005/29/EC concerning unfair business-to-consumer commercial practices and 2006/114/EC concerning misleading and comparative advertising. The book offers the first detailed analysis of the various ways in which the two Directives have been transposed in the United Kingdom, Germany, the Netherlands, Belgium and France, with a particular focus on incorrect transposition. The analysis includes an overview of the enforcement possibilities before national courts and authorities, and as such will be a valuable source for all practitioners, policy makers and academics working in the field of unfair trade law.

Ultimately the aim of the book is to expound a sound interpretation of the relationship between unfair trade law and competition law in Europe, and it therefore engages in an original examination of these two cornerstones of European economic law. The author argues that unfair trade law and competition law should be understood as 'living apart together' – complementary but autonomous and sometimes even conflicting.

*For my parents and parents-in-law
For my wife Julie and our daughter Hannah*

*“Those were steps for me, and I have climbed up over them
to that end I had to pass over them.
Yet they thought that I wanted to retire on them...”¹*

¹ F Nietzsche (1889), 8, No 42: “Das waren Stufen für mich, ich bin über sie hinaufgestiegen, – dazu musste ich über sie hinweg. Aber sie meinten, ich wollte mich auf ihnen zur Ruhe setzen ...”

Acknowledgements

This book is the result of a research project that I carried out at the *Katholieke Universiteit Leuven* (K.U.Leuven). The project was funded by the *Fonds Wetenschappelijk Onderzoek – Vlaanderen* (Research Foundation – Flanders). An earlier version of this research work has been accepted as a doctoral thesis by the K.U.Leuven in February 2010.

I am very grateful to my warm-hearted and sharp-minded promoter, Professor Dr Wouter Devroe (K.U.Leuven and Maastricht University), for the trust he put in me and the freedom he gave me in composing this book. I would also like to wholeheartedly thank my co-promoters Professor Dr Jules Stuyck (K.U.Leuven) and Professor Dr Evelyne Terryn (K.U.Leuven), with whom I also had many fruitful discussions. Warm thanks are also due to Professor Dr Hans Micklitz (European University Institute, Florence) and Professor Dr Hildegard Schneider (Maastricht University), who did me the honour of serving on the jury of my doctoral examination, as well as all other members of my research network, who encouraged me and shared useful information and experiences: my Leuven colleagues (especially Dr Silke Brammer), academics and lawyers throughout Europe, and European and national stakeholders, officials and members of Parliament.

Last but not least, I would like to express my deepest gratitude towards my family and friends for their patience and support during an intricate journey. This book is dedicated to my parents and parents-in-law, my wife Julie and our lovely daughter Hannah.

I have aimed to state the law as it stood on 31 December 2010.

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A.E.R.	<i>American Economics Review</i>
<i>Am. J. Comp. L.</i>	<i>American Journal of Comparative Law</i>
<i>Antitrust L.J.</i>	<i>Antitrust Law Journal</i>
<i>Ann. Dr.</i>	<i>Annales de droit de Louvain</i>
BB	<i>Betriebsberater</i>
<i>Bus.L.R.</i>	<i>Business Law Review</i>
<i>Cal. L. Rev.</i>	<i>California Law Review</i>
CDE	<i>Cahiers de droit européen</i>
CLJ	<i>Cambridge Law Journal</i>
C.Y.E.L.S.	<i>Cambridge yearbook of European legal studies</i>
<i>Col. J. Eur. L.</i>	<i>Columbia Journal of European Law</i>
<i>Col. J. Transnat'l L.</i>	<i>Columbia Journal of Transnational Law</i>
C.L.J.	<i>Consumer Law Journal</i>
DCCR	<i>Consumentenrecht</i>
<i>Comp. Law.</i>	<i>Company Lawyer</i>
<i>CML Rev.</i>	<i>Common Market Law Review</i>
CLP	<i>Current Legal Problems</i>
CLR	<i>Competition Law Review</i>
Co-Co-Co	<i>Contrats-Concurrence-Consommation</i>
<i>Comms. L.</i>	<i>Communications Law</i>
<i>Cornell L. Rev.</i>	<i>Cornell Law Review</i>
D.	<i>Recueil Dalloz</i>
<i>ERA Forum</i>	<i>ERA Forum</i>
EBLR	<i>European Business Law Review</i>
ECJ	<i>European Competition Journal</i>
E.C.L.R.	<i>European Competition Law Review</i>
ECLR	<i>European Contract Law Review</i>
EIPR	<i>European Intellectual Property Law Review</i>
ELJ	<i>European Law Journal</i>
E.L.F.	<i>European Law Forum</i>
<i>E.L.Rev.</i>	<i>European Law Review</i>
E.S.T.	<i>Economisch en Sociaal Tijdschrift</i>
<i>Europe</i>	<i>Europe</i>
<i>Ga. J. Int'l & Comp. L.</i>	<i>Georgia Journal of International & Comparative Law</i>
<i>Gaz. Pal.</i>	<i>Gazette du Palais</i>
GLJ	<i>German Law Journal</i>

GPR	<i>Zeitschrift für Gemeinschaftsprivatrecht – European Community Private Law</i>
GRUR	<i>Gewerblicher Rechtsschutz und Urheberrecht</i>
GRUR Int.	<i>Gewerblicher Rechtsschutz und Urheberrecht Internationaler Teil</i>
IER	<i>Intellectuele eigendom en reclamerecht</i>
ICCLR	<i>International Company and Commercial Law Review</i>
ICLQ	<i>International and Comparative Law Quarterly</i>
IJLMA	<i>International Journal of Law and Management</i>
IIC	<i>International Review of Intellectual Property and Competition Law</i>
Int. Rev. L. Ec.	<i>International Review of Law and Economics</i>
Jb. Hand. & Med.	<i>Jaarboek Handelspraktijken en Mededinging</i>
J.Bus.L.	<i>Journal of Business Law</i>
J.Cons.P.	<i>Journal of Consumer Policy</i>
J.C.P.	<i>Semaine Juridique Edition Générale</i>
J.C.P.E.	<i>Semaine Juridique Edition Entreprises et Affaires</i>
J.D.E.	<i>Journal de droit européen</i>
JIPLP	<i>Journal of Intellectual Property Law and Practice</i>
J. Law & Soc.	<i>Journal of Law & Society</i>
J.T.	<i>Journal des tribunaux</i>
J.L.&E.	<i>Journal of Law & Economics</i>
J. Pol. Ec.	<i>Journal of Political Economy</i>
Jur. Falc.	<i>Jura Falconis</i>
Legal Stud.	<i>Legal Studies</i>
LIEE	<i>Legal Issues of Economic Integration</i>
LQR	<i>Law Quarterly Review</i>
Loy. U. Chi. L. J.	<i>Loyola University of Chicago Law Journal</i>
IRIS	<i>Legal observations of the European audiovisual observatory</i>
MJ	<i>Maastricht Journal of European and Comparative Law</i>
MLR	<i>Modern Law Review</i>
NIPR	<i>Nederlands Internationaal Privaatrecht</i>
NTBR	<i>Nederlands Tijdschrift voor Burgerlijk Recht</i>
NTER	<i>Nederlands Tijdschrift voor Europees Recht</i>
NJW	<i>Neue juristische Wochenschrift</i>
NjW	<i>Nieuw juridisch Weekblad</i>
N.Y.U. L. Rev.	<i>New York University Law Review</i>
O.J.L.S.	<i>Oxford Journal of Legal Studies</i>
P.A.	<i>Petites Affiches</i>
Penn S.I.L. Rev.	<i>Penn State International Law Review</i>
Rabels Z.	<i>Rabels Zeitschrift für ausländisches und internationales Privatrecht</i>
R. W.	<i>Rechtskundig Weekblad</i>
Rev. crit. dr. int. privé	<i>Revue critique de droit international privé</i>
R.C.J.B.	<i>Revue critique de jurisprudence belge</i>
RDC	<i>Revue des contrats</i>
RDP	<i>Revue droit pénal</i>

REDC	<i>Revue européenne de droit de la consommation</i>
RIC	<i>Revue internationale de la concurrence</i>
DAOR	<i>Revue internationale du droit des affaires</i>
RIDE	<i>Revue internationale de droit économique</i>
RIDC	<i>Revue internationale de droit comparé</i>
RTD Com.	<i>Revue trimestrielle de droit commercial</i>
Rev. Lamy Conc.	<i>Revue Lamy de la Concurrence</i>
Rev. Lamy Dr. Civ.	<i>Revue Lamy de Droit Civil</i>
S.L.T.	<i>Scots Law Times</i>
Stan. L. Rev.	<i>Stanford Law Review</i>
TBH	<i>Tijdschrift voor Belgisch Handelsrecht</i>
SEW	<i>Tijdschrift voor Europees en economisch recht</i>
Sydney L. Rev.	<i>Sydney Law Review</i>
TvC[H]	<i>Tijdschrift voor Consumentenrecht [en Handelspraktijken]</i>
TPR	<i>Tijdschrift voor Privaatrecht</i>
U. Pa. L. Rev.	<i>University of Pennsylvania Law Review</i>
VrA	<i>Vermogensrechtelijke Analyses [Annotaties]</i>
WRP	<i>Wettbewerb in Recht und Praxis</i>
WuW	<i>Wirtschaft und Wettbewerb</i>
W.Comp.	<i>World Competition</i>
Y.E.L.	<i>Yearbook of European Law</i>
ZeUP	<i>Zeitschrift für europäisches Privatrecht</i>

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