The Enforcement of Competition Law in Europe

In the debate on the enforcement of competition law, many take the view that Europe should avoid the traps US law has fallen into by admitting excessive litigation. European law should not pave the way for judicial proceedings which ultimately serve the interests of lawyers or other agents rather than injured parties.

This inquiry describes the state of remedies in competition law in fifteen European countries, analyses the underlying determinants, and proposes ways of improving the enforcement of competition law. The international and European legal frameworks are presented, as is the approach of US–American law. It is argued that efforts to strengthen private enforcement of antitrust law should benefit from the rich European experience in unfair competition law. The divergence between the two fields of law is not so huge that a completely different treatment is justified. Thus, a specifically European way of competition law enforcement could be developed.

THOMAS M.J. MOELLERS holds a Chair in Civil Law, Business Law, European Law, Comparative Law and International Private Law at the University of Augsburg.

ANDREAS HEINEMANN is Professor of Commercial and Economic Law at the University of Zürich.

CONTRIBUTORS TO THE VOLUME:
The Common Core of European Private Law

General Editors
Mauro Bussani, University of Trieste
Ugo Mattei, University of Turin and University of California, Hastings College of Law

Honorary Editor
Rodolfo Sacco, University of Turin

Editorial Board
James Gordley, Cecil Turner Professor of Law, University of California, Berkeley; Editor in Chief of the American Journal of Comparative Law
Antonio Gambaro, Professor of Law, University of Milan; President of the Italian Society of Comparative Law
Franz Werro, University of Freiburg and Georgetown University Law Center
Rodolfo Sacco, President of the International Association of Legal Science (UNESCO)

For the transnational lawyer the present European situation is equivalent to that of a traveller compelled to cross legal Europe using a number of different local maps. To assist lawyers in the journey beyond their own locality The Common Core of European Private Law Project was launched in 1993 at the University of Trento under the auspices of the late Professor Rudolf B. Schlesinger. This is its seventh book published by Cambridge University Press.

The aim of this collective scholarly enterprise is to unearth what is already common to the legal systems of European Union Member States. Case studies widely circulated and discussed between lawyers of different traditions are employed to draw at least the main lines of a reliable map of the law of Europe.
Books in the Series

The Enforcement of Competition Law in Europe
Edited by Thomas M. J. Möllers and Andreas Heinemann

Commercial Trusts in European Private Law
Edited by Michael Graziaidei, Ugo Mattei and Lionel Smith

Mistake, Fraud and Duties to Inform in European Contract Law
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The Enforcement of Competition Law in Europe

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Thomas M. J. Möllers
and
Andreas Heinemann

With an essay by
David J. Gerber
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From the very beginning the Treaty of Rome included basic rules on competition law. However, these rules only covered restraints of competition (‘antitrust law’), not unfair competition law. Since then, the situation has considerably changed. The fundamental freedoms of the treaty as well as secondary community legislation have heavily influenced both fields of law. Even if this development led to an important harmonization of competition law in the Member States, one aspect has stayed rather untouched: the legal consequences of a competition law violation have been left to a large extent to the disposal of the national legislature. As far as the legal consequences in private law are concerned every national legal order has tried to integrate competition law violations into its national tort law (or in some respects contract law) system. In this process, private remedies for violations of unfair competition law have gained a greater practical importance in Europe than those for violations of antitrust law. But even in the latter branch of law, public enforcement is increasingly complemented by private law mechanisms.

The wide variety of solutions which are proposed by national law were the reason for the editors to start the comparative venture within the Trento project on the Common Core of European Private Law. Based on the Common Core methodology (elaborated by Ugo Mattei and Mauro Bussani in the tradition of Rudolf B. Schlesinger and Rodolfo Sacco), i.e. on a questionnaire containing several cases which are discussed and answered by national reporters pursuant to their respective national legal systems and taking into account all legal and extra-legal formants, we have compared the state of the law in fifteen EU Member States. Based on the weak points and gaps resulting from the comparative analysis, we submit proposals which could lead to an improvement of
private remedies in unfair competition law (Thomas M. J. Möllers) as well as in private antitrust enforcement (Andreas Heinemann). Recent initiatives on the European level for the improvement of European antitrust law triggering corresponding reforms in many member states were taken into account.

The project that has been running several years would not have been possible without the support of so many colleagues and friends. First of all, we would like to thank Wolfgang Fikentscher, who at the Trento annual meeting in 2000 inspired the birth of the competition law project. Walter van Gerven, the author of a draft EC regulation on private remedies, supported the project with his invaluable advice. David Gerber, the leading scholar in comparative competition law, drew our attention to so many aspects of the subject and contributed to this volume a comparative essay on private remedies in antitrust law. We would like to thank the country reporters for their constant engagement and the patience with which they responded to the numerous questions we had. And finally, we are deeply indebted to the participants of the Trento torts group (subsequently chaired by Mathias Reimann and Franz Werro) with whom we intensively discussed the questionnaire and the comparative details. The Common Core project has thus become a forum for us which has produced intercultural insights far beyond law.

We would also like to thank James Faulkner, Matthew Firth, Jacques Großkreuz, Thomas Wenninger and Georg S. Münzenrieder for their support in the preparation of the manuscript.

Finally, we are very grateful to Cambridge University Press for its tremendous contribution in presenting the Common Core project to the interested public.

Thomas M. J. Möllers  
*University of Augsburg*

Andreas Heinemann  
*University of Zürich*  
October 2006
Contributors to the volume

The case studies and other parts of the book have been prepared by:¹

ANTI AINE, Researcher LL.Lic., University of Turku (report Finland)

JESÚS ALFARO AGUILA-REAL, Professor Dr, Universidad Autónoma de Madrid (report Spain)

TORBJÖRN ANDERSSON, Professor Dr, University of Uppsala (report Sweden)

LIA ATHANASSIOU, Assistant Professor, University of Athens, Faculty of Law, Greece (report Greece)

KATALIN CSERÉS, Assistant Professor of Law, University of Amsterdam (report Hungary)

RIKARD ENGLUND, EKN – The Swedish Export Credits Guarantee Board, Stockholm (report Sweden)

SOFIA ENGLUND, Lawyer – Senior Associate, Hammarsköld & Co, Stockholm (report Sweden)

HELMUT GAMERITH, Professor Dr, former Vice-president of the Austrian Supreme Court and Professor at the University of Innsbruck (report Austria); in collaboration with Univ.-Ass. Dr KATHARINA MURSCHITZ, LL.M., (King’s College London)

DAVID GERBER, Distinguished Professor at Chicago Kent College of Law, USA (essay antitrust law)

ARIENNE GOMMERS, LL.M., Senior Member of Staff, Netherlands Competition Authority (report Netherlands)

ANDREAS HEINEMANN, Professor Dr, University of Zürich (editor, comparative part antitrust law, report Germany)

¹ The contributions reflect the personal opinions of their authors and are not necessarily the views of their employers or institutions.
xiv CONTRIBUTORS TO THE VOLUME

SARAH JOHNSON, LL.B. (Trinity College), LL.M. (Bruges), Solicitor, Dublin (report Ireland)
LUÍS MENEZES LEITAÃO, Professor Dr, University of Lisbon (report Portugal)
ADELAIDE LEITAÃO, Lisbon (report Portugal)
ZSÓFIA LENDVAI, Ministry of Justice, Budapest (report Hungary)
FAYNA LEÓN, LL.M. (Bruges), Lawyer, CMS Albiñana & Suárez de Lezo, Madrid (report Spain)
CORNELIA MARIN, Ass. iur., Compiègne (report France)
THOMAS M.J. MÖLLERS, Professor Dr, University of Augsburg, Institute of European Legal Orders (editor, comparative part unfair competition law, report Germany)
SIÚN O’KEEFFE, B.C.L., LL.B. (N.U.I.), LL.M. (Bruges), Barrister, Senior officer, Netherlands Competition Authority (report Ireland)
SUNE TROELS POULSEN, PhD, Associate Professor, Department of Public and International Law, University of Aarhus (report Denmark)
IZABELA Raiwa, LL.M. (Berkeley), PhD Student, University of Amsterdam (report Poland)
GIUSEPPE ROSSI, Professor of Comparative Law, University of Turin Law School (report Italy)
PETER ROTT, Professor Dr, University of Bremen (report unfair competition law England)
JEREMY SCHOLES, Solicitor, Lecturer, Department of Law, University of Sheffield, Director of Competition Law, Walker Morris, Solicitors, Leeds (report antitrust law England)
MANOLA SCOTTON, Attorney, PhD Student, University of Amsterdam (report Italy)
DAVID TOWNEND, Lecturer, University of Sheffield (report unfair competition law England)
PERTTI VIRTANEN, Judge in the Finnish Market Court (report Finland)
Abbreviations (including legislation)

General (including European and international law)

CFR Common Frame of Reference
CMLR Common Market Law Review (law journal)
CPL Competition Policy Newsletter
EIPR European Intellectual Property Review (law journal)
EC (Treaty of the) European Community
ECHR European Convention on Human Rights
ECJ European Court of Justice
ECR European Court Reports (official journal of the ECJ)
EEC European Economic Community
EP European Parliament
EU (Treaty of the) European Union
GATT General Agreement on Tariffs and Trade
ICC International Chamber of Commerce
ICLQ International and Comparative Law Quarterly (law journal)
IIC International Review of Intellectual Property and Competition Law (law journal)
lit. Litera
PC Paris Convention for the Protection of Industrial Property of 1883/1984
TCE Treaty of a Constitution of Europe
TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights
WTO World Trade Organisation

Austria

ABGB Allgemeines Bürgerliches Gesetzbuch (Civil Code)
BB Betriebsberater (law journal)
LIST OF ABBREVIATIONS

BGBI Bundesgesetzblatt
BMJ Bundesministerium für Justiz (Ministry of Justice)
BWG Bankwesengesetz
ecollex Fachzeitschrift für Wirtschaftsrecht (Law Journal)
EO Exekutionsordnung (rules on execution)
EvBl Evidenzblatt
GRUR Int. Gewerblicher Rechtsschutz und Urheberrecht
Internationaler Teil (law journal)
JBI Juristische Blätter (law journal)
KOG Kartellobergericht (Superior Cartel Court)
KWG Kreditwesengesetz
MR Zeitschrift für Medien und Recht (law journal)
MSchG Markenschutzgesetz (Trademark Code)
ÖBI Österreichische Blätter für Gewerblichen Rechtsschutz und Urheberrecht (law journal)
ÖBI-LS ÖBI-Leitsätze
ÖJZ-LSK Österreichische Juristenzeitung – Leitsatzkartei (law journal)
OGH Oberster Gerichtshof (Highest Supreme Court)
RdW Recht der Wirtschaft (law journal)
StGB Strafgesetzbuch (Criminal Code)
StPO Strafprozeßordnung
SZ Amtliche Sammlung von Entscheidungen des OGH in Zivilsachen (official journal of decisions of the Highest Supreme Court, civil cases)
UWG Bundesgesetz gegen den unlauteren Wettbewerb 1984 (Federal Act against Unfair Competition)
WBL Wirtschaftsrechtliche Blätter (law journal)
WRP Wettbewerb in Recht und Praxis (law journal)
ZPO Zivilprozessordnung (Code of Civil Procedure)

Belgium
cc Code civil
LPC Loi sur les pratiques du commerce et sur l’information et la protection du consommateur

Denmark
CA Competition Act
DKK Danish Kroner (currency)
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>DRN</th>
<th>Dansk Reklame Neve (council for advertising self-regulation)</th>
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<tbody>
<tr>
<td>FO</td>
<td>Forbrugerombudsmand (consumer ombudsman)</td>
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<tr>
<td>MFL</td>
<td>Lov om Markedsføring / Markedsføringslov (Marketing Practices Act)</td>
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### England

<table>
<thead>
<tr>
<th>AC</th>
<th>Appeal Cases</th>
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<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
</tr>
<tr>
<td>All ER</td>
<td>All England Reports</td>
</tr>
<tr>
<td>ASA</td>
<td>Advertising Standards Authority</td>
</tr>
<tr>
<td>CA</td>
<td>Competition Act 1998</td>
</tr>
<tr>
<td>CAP</td>
<td>Committee of Advertising Practice</td>
</tr>
<tr>
<td>CAT</td>
<td>Competition Appeal Tribunal</td>
</tr>
<tr>
<td>CMAR</td>
<td>Control of Misleading Advertisements Regulations 1988/2000</td>
</tr>
<tr>
<td>Code</td>
<td>British Codes of Advertising and Sales Promotion</td>
</tr>
<tr>
<td>CPA</td>
<td>Consumer Protection Act 1987</td>
</tr>
<tr>
<td>DGFT</td>
<td>Director General of Fair Trading</td>
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<tr>
<td>EA</td>
<td>Enterprise Act 2002</td>
</tr>
<tr>
<td>EAT</td>
<td>Employment Appeal Tribunal</td>
</tr>
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<td>ECLR</td>
<td>European Competition Law Review</td>
</tr>
<tr>
<td>EHRR</td>
<td>European Human Rights Reports</td>
</tr>
<tr>
<td>EMLR</td>
<td>Entertainment and Media Law Reports</td>
</tr>
<tr>
<td>EWCA</td>
<td>England and Wales Court of Appeals Decisions</td>
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<tr>
<td>EWHC</td>
<td>England and Wales High Court Decisions</td>
</tr>
<tr>
<td>FSR</td>
<td>Fleet Street Reports</td>
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<tr>
<td>FTA</td>
<td>Fair Trade Act 1973</td>
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<tr>
<td>IRLR</td>
<td>Industrial Relations Law Reports</td>
</tr>
<tr>
<td>ITC</td>
<td>Independent Television Commission</td>
</tr>
<tr>
<td>JCP</td>
<td>Journal of Consumer Policy (law journal)</td>
</tr>
<tr>
<td>OFT</td>
<td>Office of Fair Trading</td>
</tr>
<tr>
<td>QB</td>
<td>Queen’s Bench Division</td>
</tr>
<tr>
<td>RA</td>
<td>Radio Authority</td>
</tr>
<tr>
<td>RTR</td>
<td>Road Traffic Reports</td>
</tr>
<tr>
<td>SI</td>
<td>Statutory Instrument</td>
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<tr>
<td>TDA</td>
<td>Trade Descriptions Act 1968</td>
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<tr>
<td>TLR</td>
<td>Times Law Reports</td>
</tr>
<tr>
<td>TMA</td>
<td>Trade Marks Acts 1994</td>
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<tr>
<td>UKHL</td>
<td>United Kingdom House of Lords</td>
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<tr>
<td>UTCCHR</td>
<td>Unfair Terms in Consumer Contract Regulations 1994/1999</td>
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<tr>
<td>WLR</td>
<td>Weekly Law Reports</td>
</tr>
</tbody>
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**Finland**

KSL  Kulluttajansuojalaki (Finnish Consumer Protection Act)
MC   Markkinatuomioistuin (Market Court)
MCA  Laki markkinatuomioistuimesta (Market Court Act)
SopMenL  Laki sopimattomasta menettelystä elinkeinotoiminnassa (Finnish Unfair Trade Practices Act)

**France**

Bull.civ.  Bulletin des arrêts des chambres civiles de la Cour de Cassation
BVB    Bureau de Vérification des Publicités
BVP    Bureau de Vérification de la Publicité
Cass.  Cour de Cassation
cc     Code Civil
CCons  Code de la Consommation
CNP    Conseil National de Publicité
CP     Code Pénal
DGCCRF Direction Générale de la Concurrence, de la Consommation et de la Répression de Fraudes
Fasc.  Fascicule
ICC    Chambre internationale du commerce
NCPC   Nouveau Code de Procédure Civile
PIBD   Propriété industrielle – Bulletin documentaire (law journal)
RTDcom Revue de droit commercial (law journal)
TGI    Tribunal de grande instance
Trib   Tribunal
Trib.com. Tribunal commercial
UDA com. Union National des Annonceurs

**Germany**

AcP    Archiv für die civilistische Praxis (law journal)
BB     Betriebsberater (law journal)
BGB    Bürgerliches Gesetzbuch (Civil Code)
BGBl.  Bundesgesetzblatt (official journal of the Federal Legislature)
BGH    Bundesgerichtshof (Federal Supreme Court)
BGHSt  Amtliche Sammlung des Bundesgerichtshofs (official journal of the Federal Supreme Court, criminal cases)
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>BGHZ</td>
<td>Amtliche Sammlung des Bundesgerichtshofs (official journal of the Federal Supreme Court, Civil cases)</td>
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<tr>
<td>BKartA</td>
<td>Bundeskartellamt (Federal Cartel Office)</td>
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<tr>
<td>BR-Drs.</td>
<td>Bundesrat-Drucksachen (official journal of the Federal Council)</td>
</tr>
<tr>
<td>BT-Drs.</td>
<td>Bundestag-Drucksachen (official journal of the Federal Parliament)</td>
</tr>
<tr>
<td>BVerfG</td>
<td>Bundesverfassungsgericht (Federal Constitutional Court)</td>
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<tr>
<td>BVerfGE</td>
<td>Amtliche Sammlung des Bundesverfassungsgerichts (official journal of the Federal Constitutional Court)</td>
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<tr>
<td>EuR</td>
<td>Europarecht (law journal)</td>
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<tr>
<td>EuZW</td>
<td>Europäische Zeitschrift für Wirtschaftsrecht (law journal)</td>
</tr>
<tr>
<td>EWS</td>
<td>Europäisches Wirtschafts- und Steuerrecht (law journal)</td>
</tr>
<tr>
<td>FCO</td>
<td>Federal Cartel Office (Bundeskartellamt)</td>
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<tr>
<td>GG</td>
<td>Grundgesetz (Fundamental Law)</td>
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<tr>
<td>GPR</td>
<td>Zeitschrift für Gemeinschaftsprivatrecht (law journal)</td>
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<tr>
<td>GRUR</td>
<td>Gewerblicher Rechtsschutz und Urheberrecht (law journal)</td>
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<td>GRUR Int.</td>
<td>Gewerblicher Rechtsschutz und Urheberrecht, Auslands- und internationaler Teil (law journal)</td>
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<tr>
<td>GWB</td>
<td>Gesetz gegen Wettbewerbsbeschränkungen (Act against Restraints of Competition – Antitrust Code)</td>
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<tr>
<td>JZ</td>
<td>JuristenZeitung (law journal)</td>
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<tr>
<td>NJW</td>
<td>Neue Juristische Wochenschrift (law journal)</td>
</tr>
<tr>
<td>NJW-RR</td>
<td>Neue Juristische Wochenschrift – Rechtsprechungsreport (law journal)</td>
</tr>
<tr>
<td>OLG</td>
<td>Oberlandesgericht (Court of Appeals)</td>
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<tr>
<td>PreisAngV</td>
<td>Preisangabenverordnung</td>
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<tr>
<td>RabelsZ</td>
<td>Rabels Zeitschrift (law journal)</td>
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<tr>
<td>StGB</td>
<td>Strafgesetzbuch (Criminal Code)</td>
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<td>StPO</td>
<td>Strafprozessordnung (Criminal Procedure Code)</td>
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<td>Ex-UWG</td>
<td>Gesetz gegen den unlauteren Wettbewerb (UWG until 2004; earlier version)</td>
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<td>WRP</td>
<td>Wettbewerb in Recht und Praxis (law journal)</td>
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</table>

2 A synopsis of the old UWG and the UWG 2004 may be found in Begr. RegE, BT-Drs. 15/1487, p. 13.
**LIST OF ABBREVIATIONS**

**WuW** Wirtschaft und Wettbewerb (law journal)
**ZEuP** Zeitschrift für Europäisches Privatrecht (law journal)
**ZGS** Zeitschrift für das gesamte Schuldrecht (law journal)
**ZHR** Zeitschrift für das gesamte Handels- und Wirtschaftsrecht (law journal)
**ZPO** Zivilprozessordnung (Civil Procedure Code)
**ZWeR** Zeitschrift für Wettbewerbsrecht (law journal)

**Greece**
**AK** Astikos Kodikas (Civil Code)
**Arm.** Armenopoulos (law journal)
**CC** Civil Code
**CCP** Code of Civil Procedure
**CFI** Court of First Instance
**DEE** Dikaio Epicheirisseon kai Etairion (law journal)
**EEmpD** Epitheorisis Emporikou Dikaiou (Commercial Law Review)
**EllDni** Elliniki Dikaioissini (Greek Justice)
**L.** Law
**NoV** Nomiko Vima (law journal)
**PD** Presidential decree

**Hungary**
**CPA** Törvény a fogyasztóvédelemr (Act CLV of 1997 on Consumer Protection)
**HAA** Reklámőrveny (Act LVIII of 1997 on Business Advertising Activity)
**HCA** Versenytörvény (Hungarian Competition Act: Act No. LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices)
**HCC** Hungarian Civil Code: Act IV of 1959
**HCP** Hungarian Civil Procedure: Act III of 1952
**OEC** Gazdasági Versenyhivatal (Office of Economic Competition)

**Ireland**
**IAC** Irish Appeal Cases
**App. Cas.** Appeal Cases
**ASI** Code of Advertising Standards for Ireland
**EIPR** European Intellectual Property Review
**FSR** Fleet Street Reports
**Ir Jur Rep** Irish Jurist Reports
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ILRM</td>
<td>Irish Law Reports Monthly</td>
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<td>IR</td>
<td>Irish Reports</td>
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<td>ODCA</td>
<td>Office of the Director of Consumer Affairs</td>
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<tr>
<td>SGSSA</td>
<td>Sale of Goods and Supply of Services Acts 1893 and 1980</td>
</tr>
<tr>
<td>TMA</td>
<td>Trade Marks Act 1996</td>
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**Italy**

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<th>Description</th>
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<tbody>
<tr>
<td>App.</td>
<td>Court of appeal</td>
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<tr>
<td>Arch. civ.</td>
<td>Archivio civile (law journal)</td>
</tr>
<tr>
<td>art.</td>
<td>Article (in a piece of legislation)</td>
</tr>
<tr>
<td>Autorità Garante</td>
<td>Autorità Garante della Concorrenza e del Mercato (Antitrust authority)</td>
</tr>
<tr>
<td>CAP</td>
<td>Codice dell’autodisciplina pubblicitaria (Code of Self-Control of Advertising)</td>
</tr>
<tr>
<td>cass.</td>
<td>Corte di Cassazione (Highest Court)</td>
</tr>
<tr>
<td>cc</td>
<td>Codice civile (Civil Code)</td>
</tr>
<tr>
<td>c.p.</td>
<td>Codice penale (Criminal Code)</td>
</tr>
<tr>
<td>Cons. Stato</td>
<td>Consiglio di Stato (highest administrative court)</td>
</tr>
<tr>
<td>cpc</td>
<td>Codice di procedura civile (Code of Civil Procedure)</td>
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<tr>
<td>Danno e resp.</td>
<td>Danno e responsabilità (law journal)</td>
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<tr>
<td>d.lgs.</td>
<td>Decreto legislativo (legislative decree)</td>
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<tr>
<td>Foro it.</td>
<td>Il Foro italiano (law journal)</td>
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<tr>
<td>Giur.ann.dir.ind.</td>
<td>Giurisprudenza annotata di diritto industriale (law journal)</td>
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<td>Giur. it.</td>
<td>Giurisprudenza italiana (law journal)</td>
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<td>Giuri</td>
<td>Giuri dell’Autodisciplina Pubblicitaria (panel of Self-Control of Advertising)</td>
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<td>Giust. civ.</td>
<td>Giustizia civile (law journal)</td>
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<tr>
<td>IAP</td>
<td>Istituto dell’autodisciplina pubblicitaria (Institute of Self-Control of Advertising)</td>
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<td>l.</td>
<td>Law</td>
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<td>Riv.dir.ind.</td>
<td>Rivista di diritto industriale (law journal)</td>
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<tr>
<td>TAR</td>
<td>Tribunale Amministrativo Regionale (administrative tribunal)</td>
</tr>
<tr>
<td>Trib.</td>
<td>Tribunale (tribunal)</td>
</tr>
</tbody>
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**Netherlands**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>BRv</td>
<td>Burgerlijke Rechtsvordering (Code of Civil Procedure)</td>
</tr>
<tr>
<td>BW</td>
<td>Burgerlijk Wetboek (Dutch Civil Code)</td>
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</table>
xxii LIST OF ABBREVIATIONS

DCA  Dutch Competition Act
RCC  Reclame Code Commissie (Advertising Code Commission)
NCA  Netherlands Competition Authority
NRC  Nederlands Reclame Code (Dutch Advertising Code)
Sr   Wetboek van Strafrecht (Penal Code)

Poland
k.c.  Kodeks Cywilny (Civil Code)
k.p.c. Kodeks Postepowania Cywilnego (Code of Civil Procedure)
k.p.k. Kodeks Postepowania Karnego (Criminal Procedure Code)
OCCP Office of Competition and Consumer Protection
U.o.k.k. Ustawa o ochronie konkurencji i konsumentow (Act on
         Competition and Consumer Protection of 2000)
U.z.n.k. Ustawa o zwalczaniu nieuczciwej konkurencji (Act on
         Fighting Unfair Competition of 1993)

Portugal
CC  Código Civil (Civil Code)
CP  Código Penal (Criminal Code)
CPC Código de Processo Civil (Code of Civil Procedure)
CPI Código de Propriedade Industrial (Industrial Property Code)
CPP Código de Processo Penal (Code of Criminal Procedure)
CPub Código da Publicidade (Advertising Code)
DGCC Direcção Geral do Comércio e da Concorrência
Instituto do Consumidor Instituto Nacional da Defesa do Consumidor (National
Consumer Protection Institution)
LAV Lei 31/86 de Arbitragem Voluntária (Voluntary
      Arbitration Law)
LDC Lei de Defesa da Concorrência (Antitrust Code)
LDCons Lei de Defesa do Consumido (Consumer Protection Act)

Spain
AAP Asociación de Autocontrol de la Publicidad (Association for
      the Self-Regulation of Commercial Communication)
CC Código Civil (Civil Code)
CC.AA. Communidades Autónomas (autonomous regions)
CP Código Penal (Criminal Code)
<table>
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<th>Full Form</th>
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<tr>
<td>LCD</td>
<td>Ley 3/1991 de Competencia Desleal (Unfair Competition Act)</td>
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<td>LDC</td>
<td>Ley 16/1989 de Defensa de la Competencia (Act for the Defence of Competition)</td>
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<tr>
<td>LEC</td>
<td>Ley de Enjuiciamiento Civil (Code of Civil Procedure)</td>
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<tr>
<td>LECr</td>
<td>Ley de Enjuiciamiento Criminal (Code of Criminal Procedure)</td>
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<td>LGDCU</td>
<td>Ley 26/1984 General para la Defensa de los Consumidores y Usarios (Act for the Defence of Consumers and Users)</td>
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<td>LGP</td>
<td>Ley 34/1988 General de Publicidad (Advertising Act)</td>
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<td>LMa</td>
<td>Ley de Marcas (Spanish Trademark Act)</td>
</tr>
<tr>
<td>LOCM</td>
<td>Ley de Ordenación del Comercio Minorista (Act of Retail Organization)</td>
</tr>
<tr>
<td>SDC</td>
<td>Servicio de Defensa de la Competencia (Service for the Defence of Competition)</td>
</tr>
<tr>
<td>TDC</td>
<td>Tribunal de Defensa de la Competencia (Competition Court)</td>
</tr>
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<td>Sweden</td>
<td>Allmänna Reklamationsnämnd (Public Complaints Tribunal)</td>
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<td></td>
<td>Konkurrenslagen (Competition Act)</td>
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<td></td>
<td>Konsumentombudsmannen</td>
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<td>Swedish Market Court</td>
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<td>Marknadsföringslagen 1995:450 (Act on Marketing)</td>
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<td>Switzerland</td>
<td>Bundesblatt der Schweizerischen Eidgenossenschaft (official journal of the Legislature)</td>
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<td></td>
<td>Obligationenrecht (contract and torts law)</td>
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<td>Schweizer Juristenzeitung (law journal)</td>
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<td></td>
<td>Lauterkeitsgesetz (Unfair Competition Law)</td>
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<td>USA</td>
<td>Better Business Bureau</td>
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<td>Code of Federal Regulations</td>
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<td>Federal Trade Commission</td>
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<td>Federal Trade Commission Act</td>
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<td>House of Representatives</td>
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<td>International Trade Commission</td>
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<td>National Advertising Division</td>
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TCPA  Telephone Consumer Protection Act 1991
UDAP  Unfair and Deceptive Acts or Practices (abbreviation for State Unfair Trade Act)