



Amendments to the Law of Unfair Competition: greater control of the online marketplace

Royal Decree-Law 24/2021 qualifies new practices in the area of imitations, searches and online reviews as unfair

Background

Royal Decree-Law 24/2021, of 2 November, transposed several European directives into Spanish law, with a particular impact on consumer and commercial practices. This regulation makes various amendments to our legislation, including to the Retail Trade Law and the General Consumer and User Protection Act. In this article, we highlight the amendments made to Law 3/1991 of Unfair Competition.

“No” to dual quality

Royal Decree-Law 24/2021 adds a new misleading act to article 5 of Law 3/1991. Any operation to market goods claiming that are identical to other goods marketed in other Member States shall be considered unfair if such goods have a significantly different composition or characteristics. The foregoing shall not apply if the claim is legitimately and objectively justified. The purpose of this prohibition is to prevent the so-called dual quality and market discrimination.

Online searches

Article 26 of Law 3/1991, which regulates covert commercial practices, is amended so as to consider it unfair to rank a certain good higher than others as a function of online queries made by a given consumer, without disclosing that this ranking results from paid advertising or specific payments.

Fake reviews

Article 27 of Law 3/1991, which regulates other misleading practices, is also amended to include the following unfair acts (i) the inclusion of reviews that are identified as being consumer reviews without “reasonable and proportionate” measures to ensure that they are, in fact, reviews made by consumers, and (ii) commissioning third parties to include fake consumer reviews or approvals, or distorting them, in order to promote goods or services.

The General Consumer and User Protection Act is also amended and new provisions are introduced on the information requirements of the commercial promotion of goods and services. A company providing access to reviews of products and services must declare whether it guarantees that these have been made by consumers who actually purchased the product. In addition, if search results are presented, information regarding the ranking and relevance criteria must be provided.

All these amendments enhance transparency of online commercial transactions, thus favouring access to greater information prior to contracting online.