



Reporting wrongdoing to the authorities is not unfair behaviour

Judgment of the Commercial Court No. 4 of Madrid of 17 February 2025

This judgement addresses whether a complaint filed by a company with the competent authorities, alerting them to a potential irregularity committed by a market competitor, could be considered an act of disparagement and/or deception prohibited under the Unfair Competition Law.

Background

A pharmaceutical company filed a complaint with the competent regional authority regarding unlawful advertising and misrepresentation of an allergenic medicinal product owned by another pharmaceutical company. The complaint was submitted following the procedures established by law, so that the authorities could take ex officio action if deemed appropriate.

The company being reported was not part of Farmaindustria's self-regulatory system. Therefore, the complaint was submitted to the regional authorities, rather than to the control bodies of the Code of Practice.

The regional authority referred the case to the Spanish Agency for Medicines and Medical Devices (AEMPS), which then initiated an ex officio review to determine whether the product was being marketed in accordance with the applicable regulations.

After examining its presentation and suspecting that it might be an industrially manufactured medicinal product without marketing authorisation, the AEMPS opened an administrative proceeding to cease its marketing and provisionally ordered the withdrawal of the product as a preliminary injunc-

tion. This interim measure remained in place, and the main proceeding was not closed, until the company under investigation modified the product presentation to correct the irregularities identified by the AEMPS.

The complainant never made public the fact that a complaint had been filed, nor did it make any statements in the market that could have led consumers and/or healthcare professionals to suspect that the product in question might be unlawful.

However, once the reported company discovered the identity of the complainant upon reviewing the administrative file, it filed an unfair competition lawsuit, alleging that the complaint constituted acts of disparagement and deception regarding its medicinal product, which had caused damages that should be compensated.

The Commercial Court fully dismissed the lawsuit.

No acts of disparagement

The Court began by recalling that, in order for there to be an act of unfair disparagement, the defendant must have made and/or disseminated public statements capable of damaging the market reputation of the plaintiff's product, and that such statements must be inaccurate, untrue, or inappropriate.

The plaintiff argued that the defendant (the complainant) had engaged in unfair disparagement by filing a complaint that, in its view, was false and aimed solely at removing the product from the market and damaging its image.



Reporting wrongdoing to the authorities is not unfair behaviour

The Court dismissed this argument and ruled that the conduct of the complainant could not be considered an act of denigration.

.....

The Court rejected this argument and held that the complainant's conduct could not be considered an act of unfair disparagement.

First, the Court found that the complaint filed by the defendant was neither false nor unfounded.

According to the Court, the complaint was grounded and filed through legally established channels to inform the competent authorities of the identified irregularities so that they could take ex officio measures, which in fact occurred and were not lifted until the irregularities were corrected by the reported company.

Second, and no less important, the complaint was never disclosed or disseminated in the market.

No acts of deception

The Court also rejected the claim that the complainant's actions could be considered a deceptive practice prohibited by the Unfair Competition Law.

First, as already noted, the Court found no evidence that the complaint was false.

Moreover, the Court emphasised that the complaint was addressed to the competent regulatory authority, not to a consumer. A consumer, upon learning of the complaint, might have changed their behaviour toward the product. However, since the complaint was not directed at consumers, the legal requirement that the complaint must "mislead recipients and be likely to alter their economic behaviour" could not be considered fulfilled.