

Black List Review

Hamburg

International Association of Consumer Law

19 July 2023

Unfair Practices at the IACL Conference?



The speakers were asked to limit their presentation to 10 minutes if the session has five papers. Is it fair?

A Star is Born

Annex I to the Unfair Commercial Practices Directive (UCPD) is officially called the black list.

The UCPD was adopted on 11 May 2005.

Annex I aims to prevent the most harmful B2C commercial practices.



Article 5(5) of the UCPD: Annex I contains the list of those commercial practices which shall in all circumstances be regarded as unfair. The same single list shall apply in all Member States and may only be modified by revision of this Directive.

The Future in the Limelight: Unraveling the Plans

Should we expect more blacklisted commercial practices in the digital environment? Is the black list the perfect tool for combating unfair digital commercial practices?



Climbing the Career Ladder



The black list quickly climbed the career ladder, proving its exceptional role in combating unfair B2C commercial practices.

Like every star, the black list needed a refreshed image over time.

Unfair Practices at the IACL Conference?



**18TH INTERNATIONAL
ASSOCIATION OF CONSUMER LAW
(IACL) CONFERENCE**

**July 19–21, 2023
in Hamburg, Germany**



Challenges

**and Unanswered
Questions of
Consumer Law**

SCHEDULE



**institute for
responsible finance**
scientific | interdisciplinary | non-profit

SCHEDULE	
Day 1: Wednesday, July 19, 2023	
W 6	Medical Consumer Protection (13:00–14:30 / 1–2:30 p.m.)
	Chair: Charlotte Pavillon
	Izzah Khalif Raihan Abidin, Dinda Ajeng Puspanita ↳ The Ban of Cough Syrups Production in Indonesia: Who Should Be (Legally) Responsible?
	Jeannie Marie Paterson ↳ Direct-to-Consumer Medical AI: Challenging the Boundaries of Medical Diagnosis and "Informational Purposes Only"
	Faizal Kurniawan, Pradana Zaky Romadhon ↳ The Importance of Liability for Hospital - An Answer to the Dualism of Medical Dispute Resolution
W 7	Abusive, Aggressive and Unfair Practices (13:00–14:30 / 1–2:30 p.m.)
	Chair: Jacolien Barnard
	Prentiss Cox ↳ Global Regulation of Recurring Charge Contracts
	Peter Cartwright, Richard Hyde ↳ Targeting on the Basis of Emotions as an Unfair Commercial Practice
	Monika Namysłowska ↳ To Wave the White Flag or to Apply the Black List? On The Challenges of Consumer Protection against Digital Unfair Commercial Practices
	Rute Couto ↳ Unfair Commercial Practices in the Digital Environment: The Impact of Ratings, Reviews and Influencer Marketing on Consumer Behaviour
	Eleni Kaprou ↳ End-user is in, consumer is out: The new EU Digital Services package and its impact on unfair practices
W 8	Dispute Resolution in E-Commerce (13:00–14:30 / 1–2:30 p.m.)
	Chair: Christopher Bisping
	Betty Martínez-Cárdenas ↳ Online Dispute Resolution, Access to Justice and Protection of Consumer Rights in Electronic Commerce
	Mateusz Grochowski, Federica Casarosa ↳ Enforcing Private Regulation: The Challenges of Platform Economy
	Shirish V. Deshpande, Pooja Joshi Deshpande ↳ Global ODR "Smart Dispute Resolution" – Opportunities & Challenges
	Byung Jun Lee, Shindong Jung ↳ Do You Do Carrots? Dispute Resolution on Korean P2P Platforms
14:30	Coffee Break (Foyer) (2:30–3 p.m.)

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Prof. Monika Namysłowska
Chair of European Economic Law

As Fair as It Gets.
The Black List of Unfair Commercial Practices
as the Ultimate B2C Unfairness Test



Amsterdam, 29 June 2015

Part of the project financed by National Science Centre (*Narodowe Centrum Nauki*), decision No. 2013/11/B/HS5/03633

2015

Today







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Prof. Dr. Monika Namysłowska
Department of European Economic Law

To wave the white flag or to apply the black list?

**On the challenges of consumer protection
against unfair digital commercial practices**

IACL, Hamburg, 19 July 2023

The research leading to this presentation was supported by the National Science Centre (Narodowe Centrum Nauki)
in Poland (2018/31/B/HSS/01169)



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5 things to know about the black list:

1) Annex I to the UCPD

2) Unfair *per se*

3) 35 commercial practices: 27 misleading, 8 aggressive

4) Not more, not less

5) Modification by the revision of the UCPD

First reviews

"Overregulation!"

"Arbitrary selection."

"Imprecisely formulated."

"Excessively detailed."

"The level of unfairness varies significantly among commercial practices listed in Annex I."

"Decisive criterion for assessing unfairness."

"Focal point."

"Harmonisation by example."

"Best expression of the characteristics of Directive 2005/29/EC."

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*Gaining significance
&
refreshing the image*

Gaining significance:

1. *Ex ante* effect
2. Judgments of the CJEU
3. B2B black list of unfair trading practices

Refreshing the image:

New per se prohibitions:

1. Disclosure of **paid-for advertising and ranking** (point 11)
2. **Reselling events tickets** acquired by automated means (point 23a)
3. Misleading as to the **origin of the review** (point 23b)
4. Submitting **false consumer reviews** (point 23c)

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Black list & new technologies

*Green
Transition*

Draft AIA

*Digital
Fairness
Act*

Why?

Proposal for a Directive amending the UCPD & the CRD as regards empowering consumers for the green transition

10 new prohibitions *per se*

& EP amendments:

- Giving **more prominence to certain choices** when asking the recipient of an online service for a decision (point 7a (i))
- Making the **procedure of terminating a service significantly more burdensome** than signing up to it (point 7a (ii))

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Why?

Prohibited Practices (Article 5)

the placing on the market, putting into service or use of an AI system:

- that deploys **subliminal techniques** beyond a person's consciousness
- that **exploits any of the vulnerabilities** of a specific group of persons due to their age, physical or mental disability
- for **social scoring**
- for making **risks assessments** (criminal or administrative offence) based on profiling
- to **infer emotions**
- (...)

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Why?

Digital fairness – fitness check on EU consumer law

- **public consultation** (28 November 2022 - 20 February 2023)
- **targeted consultation:** consumer associations and NGOs; business associations; national competent authorities; European Consumer Centres (ECCs) (27 June 2023 - 25 September 2023)
- new provisions?
- BEUC: Digital Fairness Act

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Why?

Why?



Thank you for your attention!

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