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Employee acts of unfair competition

The aim of this PhD dissertation is to identify the category of employee acts of unfair competition. Although the main addressee of the legal norm contained in The Act of 16 April 1993 on Suppression of Unfair Competition are entrepreneurs, defined in article 2 of this act, also other subjects, including employees, have the capacity to commit some acts of unfair competition. Because of the fact that the legal position of an employee, who commits an act of unfair competition against their employer is specified by The Act of 16 April 1993 on Suppression of Unfair Competition, the Act of 23 April 1964 – the civil Code and the Act of 26 June 1974 - Labour Code, it has specific nature.

One thesis of the dissertation is that the perpetrator of such an act is an employee, defined in article 2 of Labour Code as a person employed on the basis of an employment contract, an appointment, an election, a nomination or a co-operative employment contract. In every basis of employment there are some groups of employees who have capacity to commit an act of unfair competition. The meaning of The Act of 16 April 1993 on Suppression of Unfair Competition is most important when it comes to protection of interests employers-entrepreneurs who hires employees on basis of employment contract and co-operative employment contract.

Among acts of unfair competition contained in The Act of 16 April 1993 on Suppression of Unfair Competition an employee can be the perpetrator of: 1) disclosing, making use of or obtaining other persons' information constituting a business secret of an enterprise, 2) inducing a person working for an entrepreneur under an employment relationship or another legal relationship not to perform or to improperly perform duties or customers of an entrepreneur or other persons to dissolve a contract with them or not to perform or improperly perform the contract, 3) disseminating untrue or misleading information about the entrepreneur or the enterprise and 4) submitting business information by a creditor to the business information office in violation of the Act of 9 April 2010 on providing access to business

information and on business data exchange or a creditor's failure to update or delete business information despite the occurrence of an obligation to update or delete the same pursuant to the abovementioned Act. Employees can also bear responsibility on the basis of article 3 of The Act of 16 April 1993 on Suppression of Unfair Competition, which contains a general clause.

In the doctoral dissertation it has been found that not every act of unfair competition committed by an employee against the employer is an 'employee act of unfair competition'. Such status is only true of employee's behavior stipulated in articles: 11, 12, 14, 17f or general clause contained in article 3 The Act of 16 April 1993 on Suppression of Unfair Competition, which is committed by an employee against the employer-entrepreneur, which additionally qualifies as violation of employee's duties.

The author finds that there is a complex model of responsibility in case of committing an employee act of unfair competition. It consists of: employee responsibility, disciplinary responsibility and responsibility based on The Act of 16 April 1993 on Suppression of Unfair Competition (civil and criminal). Author points out that cases concerning demands consist in article 18 The Act of 16 April 1993 on Suppression of Unfair Competition if the employer is a plaintiff and an employee is an defendant are labour law cases as a cases incidental to an employment relationship (article 476 the Act of 17 November 1964 – Code of Civil Procedure). On the other hand, the demand of repairing of the damage inflicted, according to the general principles is a labour law case as a case involving claim arising out of employment relationship.

As a result of complex model of responsibility for employee act of unfair competition there is a possibility that there may many simultaneous proceedings initiated by employer-entrepreneur. As a rule, they are independent from each other. An exception results from article 11 Code of Civil Procedure, which stipulates that 'the findings of fact as to the commission of a crime made in a final and non-revisable conviction issued in criminal proceedings shall be binding on the court in civil proceedings'.

The main research method is the dogmatic-law method. The research included analyzing legal acts, literature, judicial decisions and codes of ethics. Historical method is used supplementary in the dissertation.

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