Effectiveness of legal remedies against unfair competition

V o z á r, J.*

VOZÁR, J. Effectiveness of legal remedies against unfair competition. Právny Obzor, 108, 2025, special issue, pp. 4–20. https://doi.org/10.31577/pravnyobzor.specialissue.2025.01

Effectiveness of legal remedies against unfair competition. This article examines the effectiveness of legal instruments designed to protect against unfair competition within the Slovak legal system. It analyzes the functionality of substantive claims for refraining from unlawful conduct and for removing defective states under the Commercial Code. The author highlights the impact of digital technologies and new marketing practices, such as greenwashing, on the current application of competition law. A significant portion of the text is dedicated to procedural aspects governed by the Civil Dispute Order, with a specific focus on the practical utility of interim measures. The study critically evaluates the institute of appropriate satisfaction, emphasizing its dual role of compensating non-material harm and serving as a preventive sanction. It also addresses the specific procedural regime for the protection of trade secrets introduced by recent harmonization with EU directives. The analysis compares the Slovak legal environment with those of Germany and the Czech Republic, noting significantly lower litigation activity by consumer associations in Slovakia. The text discusses the limited practical application of damages due to the rigorous burden of proof required to establish the causal link in competition disputes. Attention is also drawn to the complementary role of public law enforcement through the Advertising Act in cases of misleading advertising. The article concludes that while the legislative framework is robust, greater procedural activism and strategic litigation are required to achieve adequate market protection.

Keywords: *Unfair competition, Interim measures, Appropriate satisfaction, Civil procedure, Trade secret*

Introduction

Unfair competition law performs a multi-purpose function in a market economy. Its role is not only to protect honest entrepreneurs from competitors‘ dishonest practices, but also to ensure equal opportunities, foster a healthy competitive environment, and protect consumers from misleading, deceptive, or otherwise harmful commercial practices that may distort their decision-making in the market. Unfair competition law thus constitutes an integral component of the broader regulatory system of economic competition, contributing to the stability and efficient functioning of the market.

The development of digital technologies, the significant shift of marketing activities into the online environment, the emergence of new forms of commercial communication, including influencer marketing,[1] Moreover, increasingly aggressive marketing strategies substantially shape competitive behaviour. Traditional forms of misleading advertising

* Doc. JUDr. Jozef Vozár, CSc. Institute of State and Law, Slovak Academy of Sciences. The article was prepared as part of the VEGA project: 2/0049/25 Efektivita právnych prostriedkov ochrany proti nekalej súťaži a procesnoprávne aspekty ich uplatňovania (Effectiveness of legal remedies against unfair competition and procedural aspects of their application).

[1] ZLOCHA, Ľ. – STRÉMY, J. Verejnoprávna a súkromnoprávna regulácia influencer marketingu. In Potravinové právo 2024. Trnava : Trnavská univerzita v Trnave, 2024, s. 84 – 99.

are now accompanied by new phenomena – including greenwashing,[2] covert commercial communications, and manipulative online practices (dark patterns) – characterized by a high degree of technical and psychological sophistication. These trends raise the professional debate on legal protection against unfair competition to a new level and test the limits of existing substantive and procedural instruments developed under markedly different technological and media conditions.

Protection against unfair competition is not based solely on the existence of substantive legal rules, but above all on their effective enforcement through procedural law. It is precisely the procedural mechanisms that determine whether legal protection is applied swiftly, effectively, and to an extent capable of preventing the deepening of harmful effects caused by unfair competitive conduct. In Slovak legal scholarship, however, unlike in Czech legal doctrine[33], a standalone monograph comprehensively analyzing procedural remedies against unfair competition is still lacking. Although scientific studies exist that address individual procedural claims[4] or selected judicial decisions,[5] Their scope does not yet provide a complete picture of the application problems and the limitations of adequate judicial protection.

The aim of this article is therefore to examine the effectiveness of legal instruments for protection against unfair competition as regulated in the Commercial Code and in the Civil Dispute Code (hereinafter, „CDC“) and to critically assess their capacity to respond to the current needs of business practice. When evaluating the effectiveness of legal remedies, one cannot abstract from the institutional framework in which protection is implemented. The Civil Dispute Code (CDC) introduced a fundamental change in the architecture of judicial jurisdiction, with a direct impact on the speed and expertise of proceedings. Unlike disputes concerning industrial property, which under § 25 CDC fall within the exclusive jurisdiction of a single specialised court (the District Court Banská Bystrica) for the entire territory of the Slovak Republic, disputes arising from unfair competition are subject to the divided causal jurisdiction of three district courts (the Bratislava III Municipal Court, the District Court Banská Bystrica, and the Košice Municipal Court) pursuant to § 26 CDC. This legislative dualism becomes critically important in cases of so-called cross-protection, where the factual circumstances of the

[2] GSELL, B., MEYER, S. How to Combat ‘Greenwashing. In *Journal of European Consumer and Market Law* (EuCML), 2025, č.1, s. 23. The “Six Sins of Greenwashing”. A Study of Environmental Claims in North American Consumer Markets. Elektronicky dostupné [27.12.2024]: https://sustainability.usask.ca/documents/Six_Sins_of_Greenwashing_nov2007.pdf

[3] ONDREJOVÁ, D. Právní prostředky ochrany proti nekalé soutěži. Praha : Wolters Kluwer ČR, 2010.

[4] ZAVADOVÁ, D. Náhrada škody a určovanie výšky škody v sporoch vo veciach nekalej súťaže. In Justičná revue. 2016, č. 12, s. 1395 – 1407. STRÉMY, J. Právna úprava nástrojov ochrany spotrebiteľa pred nekalou súťažou. In Banskobystrické dni práva II. Banská Bystrica : Belianum, 2017, s. 170 – 179. MORAVČÍKOVÁ, A. Odškodnenie nekalosúťažného konania primeraným zadosťučinením. In VOZÁR, J. (ed.) Zodpovednosť v práve. Bratislava : Wolters Kluwer, 2019, s. 209 – 218. ZLOCHA, Ľ. Nárok na primerané zadosťučinenie. In Právny obzor. 2020, č. 3, s. 198 – 210. KOPČOVÁ, R. Osoby aktívne legitimované v sporoch z nekalej súťaže. In: Právnické listy. Plzeň: Wolters Kluwer, 2025, 1, s. 23–30.

[5] RUDOHRADSKÁ, S. Uznesenie Najvyššieho súdu SR sp. zn. 5 Obdo 9/2023 z 3. 9. 2024, R 13/2025 (nekalá súťaž). In Súkromné právo, 2025, č. 3.

case simultaneously concern unfair competition and intellectual property rights (e.g., parasitic use of a trade mark). In the interest of procedural economy and to avoid duplicative proceedings, the CDC introduces the jurisdictional attraction, whereby the dispute is transferred to the court competent for industrial property matters. Knowledge of these procedural rules is a prerequisite for adequate defence, since filing an action with a court lacking subject-matter jurisdiction inevitably leads to delays caused by the transfer of the case.

The analysis will focus particularly on traditional private-law claims – prohibitory (injunctive) claims, removal claims, satisfaction claims, and claims for damages – evaluating their applicability and practical effectiveness in confronting the real forms of competitive torts, including modern manifestations of unfair competition arising in the digital environment.

Special attention must also be paid to procedural instruments under the Civil Disputes Code (CDC), especially interim measures, which, in practice, represent the fastest and often the only truly effective means of protection in situations of ongoing or imminent interference with competitors‘ rights.

Slovak legislation also provides affected entities with the option to seek protection against certain forms of unfair competition through public law – the Advertising Act and the Consumer Protection Act. These statutes make it possible to penalize specific manifestations of unfair competition – particularly misleading or covert advertising, or aggressive commercial practices – without the injured party needing to initiate civil litigation. The advantages of this approach include a significantly lower procedural burden on the affected entity. The commencement of proceedings requires only the filing of a complaint with the competent supervisory authority, which is obliged to examine the matter and, in case of a violation, impose a sanction.

Beyond administrative law protection, criminal law represents the ultimate means (ultima ratio) of protecting economic competition. Section 250 of the Criminal Code penalizes the offence of abuse of participation in economic competition, where the perpetrator intentionally harms another competitor‘s good reputation through unfair competition. Unlike civil-law regulation, which is based on strict objective liability (regardless of fault) and requires only an endangerment of rights to trigger remedies, criminal liability requires proof of intentional culpability and the occurrence of a specific consequence, namely damage to reputation. Although this instrument is used more sparingly in practice due to demanding evidentiary requirements, its existence has a significant general preventive effect on the market environment.

The analysis will draw not only from domestic and foreign legal literature but also from selected decisions of Slovak and foreign courts.

1. Cease-and-Desist and Removal of Unlawful Conduct

Cease-and-desist claims constitute one of the fundamental pillars of private-law protection against unfair competition. Their primary function is to prevent the continuation

or repetition of unlawful conduct that endangers or disturbs the economic interests of the injured competitor. The essence of this claim lies in imposing an obligation on the infringer to refrain from certain unfair competitive practices, rather than sanctioning past violations to prevent future interference. The cease-and-desist claim, therefore, serves a predominantly preventive function and is particularly important in situations where repeated disruption of the affected party‘s market position is likely.

In German legal practice, cease-and-desist claims are a widely used means of protection. Actions seeking injunctive relief are filed not only by directly affected competitors but also, very often, by professional and consumer associations, which, under German law, are actively authorized to bring such actions.[6] For example, in cases involving environmentally misleading claims (greenwashing), these associations play a significant role in identifying questionable practices and in shaping case law that contributes to legal certainty and the predictability of judicial decision-making.[7]The activities of the German *Wettbewerbszentrale* have led to a groundbreaking decision of the Federal Court of Justice (*Bundesgerichtshof*) in the area of greenwashing. The long-term, systematic enforcement activity of this organization – in particular, initiating lawsuits against misleading environmental claims used by entrepreneurs in marketing communications – created the conditions for the highest German court to issue a comprehensive statement on the legal standards for assessing claims of „climate neutrality“ in advertising.[8]

Removal claims are closely linked to cease-and-desist claims, though their functions differ. Their purpose is not to prevent future interference but to eliminate the consequences of unfair conduct that has already occurred. The typical content of a removal claim is an obligation imposed on the infringer to rectify the unlawful state of affairs – for example, to remove misleading advertising from the online environment. In practice, such claims play an important role, particularly where merely stopping the conduct is insufficient because the unlawful consequences persist (for instance, in the online environment, where content is widely shared and may remain accessible for a long time).

Cease-and-desist and removal actions are, in practice, associated with several limitations that weaken their ability to ensure adequate and systemic protection against unfair competition. First and foremost, they depend on competitors‘ or consumer organizations‘ initiatives. Regarding this issue of initiative, practical application encounters a significant interpretative problem regarding the active standing of individual consumers. While § 53 of the Commercial Code grants the right to seek protection in general to all persons affected by unfair competition, § 54(1) of the Commercial Code

[6] The German *Wettbewerbszentrale* was established less than three years after the German law against unfair competition was passed (1912), enabling the creation of such organizations. German *Wettbewerbszentrale* aims to promote fair competition and protect consumers, businesses, and the market as a whole from unfair practices. www.wettbewerbszentrale.de

[7] Landgericht Kiel, Urteil vom 02.07.2021, Az. 14 HKO 99/20. Landgericht Konstanz, Urteil vom 19.11.2021, Az. 7 O 6/21 KfH Oberlandesgericht Düsseldorf, Urteile vom 06.07.2023, Az. I-20 U 72/22 und Az. I-20 U 152/22

[8] BGH, Urteil vom 27.06.2024, Az. I ZR 98/23.

lists, in relation to cease-and-desist and removal claims, only competitors and legal persons authorized to protect the interests of competitors or consumers. A part of legal doctrine derives from this wording a restrictive conclusion: an individual consumer is not entitled to bring a cease-and-desist action and may only seek satisfaction or compensatory damages. Against this opinion, however, stands the logical argument *a maiori ad minus*: if the legislature granted legal persons representing consumer interests the right to file a cease-and-desist action, there is no rational reason to deny this right to the consumer himself, whose interests are primarily protected. The ambiguity of the legal regulation at this point constitutes a latent barrier to effectiveness, as it discourages consumers from actively pursuing claims to stop unlawful conduct. The success and scope of enforcement, therefore, depend on the willingness of affected parties to enter proceedings and bear the associated procedural and economic risks. Although consumer protection associations may obtain an order prohibiting unfair competitive conduct, unlike injured competitors, they cannot seek satisfaction. This limited repertoire of claims significantly reduces the preventive effect of such actions.

The practical impact of these actions is further limited by the fact that their effects do not operate *erga omnes*. Judicial decisions typically apply only to the specific case and the parties who brought the claim, which prevents broader systemic effects on the market. Finally, these claims have a limited deterrent effect. Litigation costs and other procedural expenses are usually negligible for larger commercial enterprises compared to the economic benefits that short-term unfair practices may yield. Even when the action is successful, the financial consequences for the infringer are often marginal, which diminishes the preventive function of this legal instrument.

A significant procedural specificity that directly influences the strategy and effectiveness of protection is the prohibition on cumulation of actions set out in § 54(2) of the Commercial Code. This provision extends the effects of *litispendence* and *res judicata* beyond the general framework of civil procedure. In practice, this means that once one competitor files an action seeking an order to cease certain unfair competitive conduct (e.g., a specific advertising campaign), other affected competitors lose the possibility to bring their own separate action seeking the same relief against the same defendant. While the purpose of this rule is procedural economy and the protection of the defendant from an excessive number of parallel proceedings, for injured parties, it requires a high degree of procedural vigilance. Adequate protection in such cases cannot be achieved by filing a new action, but only by instituting third-party intervention in the ongoing proceedings. The legislature balances this limitation by extending the binding effects of a final judgment delivered in such proceedings to other entitled parties, thereby granting the judgment *erga omnes* effects within the circle of injured subjects.

Despite these limitations, cease-and-desist claims continue to play an essential role. Although formally they operate only *inter partes*, the decisions issued in such proceedings may have significant persuasive and argumentative influence within the broader judicial landscape. Case law arising from these disputes often provides interpretive guidance and methodological principles that may help other courts resolve similar cases. In this way,

they contribute to the gradual unification of judicial practice. They may accelerate decision-making on related matters, thereby strengthening their factual importance beyond the confines of the specific dispute.

Slovak legal practice in this respect develops differently from German practice. Cease-and-desist and removal claims are also applied in Slovakia, yet in a significantly smaller number of proceedings and generally on an individual basis by separate competitors. Consumer organizations initiate such actions only exceptionally, which considerably reduces the number of judicial disputes that could contribute to the systematic development of case law.[9] This lower degree of procedural activism is subsequently reflected in a more limited capacity of judicial practice to respond to new forms of unfair competitive conduct.

In Slovak practice, cease-and-desist and removal claims are often combined with claims for adequate satisfaction under § 53 of the Commercial Code. This combination reflects an effort not only to stop unlawful conduct and eliminate its consequences but also to provide financial reparation for the unauthorized interference with the rights or economic interests of the injured competitor. In practice, merely refraining from the conduct or removing its consequences often fails to fully restore the balance between competing subjects. Unfair competition may cause not only reputational harm or disruption of market position but also concrete pecuniary loss.

2. Adequate Satisfaction and Damages

2.1 The Function of Adequate Satisfaction

Within the system of unfair competition claims, adequate satisfaction serves to compensate for non-pecuniary harm. Its purpose is to remove the adverse consequences of an interference with the competitor‘s intangible interests, in particular his good reputation, name, or the integrity of his market position. Liability for the occurrence of harm is assessed according to an objective principle. Fault is not required; the mere endangerment of protected rights is sufficient. It is therefore a private-law delict of an endangerment nature. As with damages, the claimant must prove the existence of a causal link between the unlawful conduct and the harm suffered; however, unlike pecuniary loss, the precise quantification of the extent of non-pecuniary harm is not required, as it is in the case of damage – what matters is proof of its existence and justification.

Adequate satisfaction serves several functions. The High Court in Prague has emphasized the dual function of adequate satisfaction. In addition to its compensatory purpose, it also serves as a private-law sanction against the infringer, thereby acquiring a preventive and educational dimension. This punitive element applies in particular in

[9] In Slovakia, no association is functionally and legally comparable to the German Wettbewerbszentrale – a professional organization with a specific mission to systematically monitor and enforce rules against unfair competition through lawsuits.

cases of serious interferences, where the intensity of the harm requires a more robust legal response.[10]

In addition to its compensatory function, adequate satisfaction also plays an important preventive role. It is intended to deter wrongdoers from engaging in further unfair competition and to signal to the business community that unfairness will not be tolerated and will be met with appropriate consequences. For that reason, it is essential that the court award adequate satisfaction at a level which, in the specific case, is capable of fulfilling its preventive function – that is, that it has a sufficiently perceptible impact on the infringer.

Monetary satisfaction is granted in particular where non-monetary measures – such as a public apology or the withdrawal of the unlawful statement – are insufficient to eliminate the consequences of the interference. The Supreme Court of the Slovak Republic has held that monetary satisfaction is appropriate where a person whose rights have been infringed or endangered by unfair competition has suffered non-pecuniary harm and where non-monetary forms of satisfaction would not provide adequate redress.[11]

At the same time, the law does not exclude a combination of monetary and non-monetary forms of adequate satisfaction, provided that their overall sum meets the proportionality criterion and effectively removes the consequences of the interference. The choice of the specific form lies with the claimant, who nevertheless bears the burden of proof that the chosen form of satisfaction is adequate in light of the nature, intensity, and consequences of the harm suffered.

2.2 Lawfulness, Proportionality, and the Preventive Function of Adequate Satisfaction

The fundamental principle in deciding on adequate satisfaction is the principle of lawfulness. Its essence lies in respecting the statutory conditions under which a sanction may be imposed. These conditions – albeit only in very general terms – are laid down in the Commercial Code itself. The courts must therefore operate within these statutory boundaries, while at the same time enjoying a relatively wide margin of discretion when determining the specific amount of satisfaction.

For the proper and fair imposition of a sanction, adherence to the principles of individualization is also important. The principle of individualization means that the type, combination, and intensity of sanctions must, in a given case, be determined to reflect all the circumstances and particularities of that case.[12] As a result, the assessment of proportionality and the determination of the specific amount of satisfaction remain matters for the court‘s individual evaluation. The court must carefully balance the protection of the injured party, the preventive function of the sanction, and the requirement of legal certainty in the market. The final decision should result from an assessment of

[10] Decision of the High Court in Prague, File No 3 Cmo 684/95.

[11] Order of the Supreme Court of the Slovak Republic, File No. 4 Obo 4/2000.

[12] See, e.g. Judgment of the Regional Court in Brno, File No. 57 Ca 49/2006.

all relevant circumstances of the case, and this reasoning must, in line with established case law, be rational, reviewable, internally consistent, and properly justified.

Proportionality constitutes an important substantive requirement of adequate satisfaction; it concerns the form, amount, and scope of the satisfaction. Unlike damages, which compensate the entirety of pecuniary loss, the purpose of satisfaction is to provide an appropriate redress for non-pecuniary harm. In determining its amount, the court exercises its discretion. It is bound by the relief sought in the claim, but may take other relevant evidence. In assessing proportionality, it considers, in particular, the manner in which the claim is reasoned, the evidence submitted, and the intensity and impact of the interference on the claimant.

Although the law does not set explicit criteria for determining the amount of satisfaction, the case law of the Supreme Court of the Czech Republic identifies relevant factors such as the seriousness and intensity of the unfair conduct, its impact on the market, the value of the injured party's goodwill, the turnover and scope of the impact on business activities, as well as the motive, knowledge, and reaction of the defendant to prior warnings.

The Supreme Court of the Slovak Republic places particular emphasis on the duration of the unlawful conduct and its voluntary termination.[13] The claimant does not need to quantify the non-pecuniary harm precisely, but must provide a convincing justification for the appropriateness of the amount claimed.

Another important principle that plays a key role in determining the form and amount of adequate satisfaction is the principle of proportionality in light of its purpose. The purpose of satisfaction in the field of unfair competition is multi-layered. Primarily, it has a compensatory character, aimed at restoring the disturbed balance and protecting the fair functioning of competition. Proportionality in terms of purpose thus operates as a value-based corrective that prevents extremes and ensures that satisfaction is not only lawful, but also reasonable, fair, and effective.

In assessing the effectiveness of this instrument, it is necessary to reflect on the evolution of case law on the relationship between monetary and non-monetary forms of satisfaction. Although traditional interpretation favoured non-monetary satisfaction and allowed monetary satisfaction only on a subsidiary basis, modern doctrine emphasizes that, in business relationships primarily oriented towards profit, both forms are equivalent. Insisting on the primary application of non-monetary forms (such as an apology) may, in some instances, be counterproductive, as, over time, it may inappropriately revive public interest in an otherwise forgotten infringement. In contrast, a monetary sanction fulfils its repressive function immediately and tangibly. From the perspective of legal certainty and litigation strategy, however, the most crucial issue is the limitation period governing this claim. A long-standing debate over whether the right to monetary satisfaction is an imprescriptible personality right or a patrimonial right has been resolved by the Supreme Court of the Slovak Republic in favour of the latter.[14] This leads to a fundamental

[13] Decisions of the Supreme Court of the Slovak Republic, File No. 5 Obo 138/2006 and 3 Obo 95/2005.
[14] Decision of the Supreme Court of the Slovak Republic, File No 2 Cdo 278/2007

conclusion for practice – the right to monetary satisfaction is subject to the general limitation period. For the injured competitor, this means a strict imperative to act without delay; otherwise, he risks the infringer successfully raising the defence of limitation, which would definitively frustrate the possibility of obtaining effective financial satisfaction.

2.3 Relationship between adequate satisfaction and compensation for damages

In determining the extent of adequate satisfaction, it should be emphasized that its nature is fundamentally different from compensation for damages. While a claim for damages is based on the principle of restitutio in integrum, i.e. an attempt to compensate the injured party in full for all proven financial losses, the concept of adequate satisfaction is based on different principles. Its purpose is not to provide complete and accurate compensation for non-pecuniary damage, which is by its nature usually unquantifiable, but to alleviate it appropriately. The criterion of adequacy reflects the fact that non-pecuniary damage cannot be quantified as precisely as pecuniary damage, and therefore, the law does not seek to provide full compensation, but rather compensation that is appropriate to the circumstances of the specific case.

In the field of unfair competition offences, damages compensation is rarely applied in practice. The main reason for this is the extraordinary difficulty of proving a direct causal link between unfair competition and the occurrence of damage. The injured trader must not only prove the existence of the damage itself, but also that it was caused exclusively or decisively by the unfair competition of the competing company, which is often objectively very complicated. A typical example is when an imitation of an original product appears on the market. Although it would be natural to expect a decline in sales of the original, a particular period may be dominated by market conditions, an increase in overall demand, or other economic factors that mask the actual impact of unfair competition on the injured party‘s economic results. As a result, it is tough to prove that the damage was caused by the introduction of the imitation to the market rather than broader market movements.

3. Interim Measures Ordered Under the Civil Dispute Code (CDC)

3.1. General Preconditions

Interim measures are regulated in Chapter Three of Part Three of the CDC, which, since 2015, has introduced several changes enhancing the practical usability of this instrument. One of the most significant innovations is that, after an interim measure is ordered, proceedings on the merits do not necessarily have to follow; if a permanent regulation of relations can be achieved, the decision has the nature of a decision on the merits. The CDC also allows issuing an interim measure whose content is identical to the operative part of a decision on the merits (§ 330(2) CDC), which is particularly important in unfair competition disputes.

The admissibility of the so-called identity of the petit (the congruence between the operative part of the interim measure and the petit of the action on the merits) is crucial in unfair competition matters, even though in other types of proceedings it encounters the limits of the prohibition on prejudging the decision. Judicial practice (for example, in the well-known disputes concerning the designation „Budějovický" or in cases involving domain names) has confirmed that where an interim measure seeks to prohibit conduct that fulfills the characteristics of unfair competition, formal congruence with the petition for the action is not an obstacle to granting the measure. The decisive criterion is the urgency of preventing irreparable harm from occurring or spreading.

Interim measures acquire particular significance in modern practice in cases of so-called domain grabbing (speculative domain registrations). In such cases, a rapid judicial intervention, such as prohibiting the disposition of the domain and ordering its blocking by the registrar, is often the only way to ensure the future enforceability of the judgment. Without such a measure, there is a real risk that the domain will be transferred to difficult-to-reach third parties (often in foreign jurisdictions), rendering subsequent legal protection merely academic.[15]

The court may order an urgent measure pursuant to Section 325(1) of the CSP either because of the need for immediate adjustment of circumstances or because of concerns that enforcement may be endangered. In unfair competition disputes, the first reason is usually the most common. When issuing such a measure, the principle of subsidiarity applies – the measure may be granted only if the intended purpose cannot be achieved through a securing measure under § 343 CDC.

3.2. Assessment of the Merits of the Application and the Court's Decision

An application for an interim measure must contain the particulars of a claim under § 132 CDC and must be accompanied by all documents on which the applicant relies (§ 326(2) CDC). The applicant must prove that the conduct in question constitutes unfair competition, demonstrate the existence of an unlawful situation, and justify the need for immediate regulation of relations. An interim measure is justified if the applicant is threatened with damage, harm, or a deterioration of his legal position.

The court assesses, in particular, whether there is a proven legal relationship between the parties, whether the applicant's claims justify the need for an urgent regulation of relations, whether the measure is capable of achieving the intended purpose in practice, whether it would disproportionately interfere with the rights of the obligated party, and whether the intended purpose could be achieved through a securing measure instead.

The Constitutional Court of the Slovak Republic has repeatedly stated in its case law that, in proceedings on interim measures, ordinary courts are not required to observe all the formal rules of evidence applicable in proceedings on the merits. In such proceedings,

[15] ZLOCHA, Ľ.: Zneužitie doménových mien v nekalej súťaži. Právny obzor, 2017, č. 6, s. 595 – 610.

the alleged facts need not be proven in full; it is sufficient to certify them as *osvedčené*—that is, that the alleged circumstances appear highly probable.[16]

The court may decide on the application without hearing the parties or holding a hearing (§ 329(1) CDC), which corresponds to the instrument's purpose—preventing the opposing party from frustrating the proposed measure by its reaction. The court may dismiss the application or order the measure in whole or in part. The decisive factor is the situation at the time the order is issued (§ 329(2) CDC).

If the court orders an interim measure before proceedings on the merits have begun and does not impose an obligation to file an action, it must instruct the parties on the option to file an action on the merits and specify the subject matter of such proceedings (§ 337 CDC). The applicant obtains rapid and effective procedural protection but bears the risk of liability for any damage caused to the opposing party if the claim proves to be unfounded.

The current legal framework governing interim measures represents progress over the previous legislation in several respects:

- It constitutes a qualitative improvement in the provision of temporary judicial protection as part of the fundamental right to judicial protection.
- It allows the dispute to be resolved without contentious proceedings.[17]
- It balances the applicant's advantages by establishing conditions for compensating for damage or other harm.

Proceedings on interim measures, as well as decision-making regarding further procedural steps, lie primarily in the hands of the ordinary courts. These courts have complete jurisdiction to assess whether the statutory conditions are met, to make the necessary prima facie assessment of the alleged facts, and to determine the scope and content of the measure itself. The Constitutional Court of the Slovak Republic may intervene in such proceedings only exceptionally—usually after all ordinary and extraordinary remedies have been exhausted—and only in cases where the alleged procedural errors reach an intensity amounting to an interference with fundamental rights or freedoms of a party to the proceedings.

The Constitutional Court repeatedly emphasizes that it is not another appellate instance reviewing the substantive correctness of the decision on an interim measure. In the reasoning of its decision, it has stated, inter alia, that it may intervene if the decision of the ordinary court resulted in a procedural excess constituting a manifest conflict with the principles of a fair trial.[18] A similarly restrained approach can also be found in the case law of the Constitutional Court of the Czech Republic.[19] It follows that the primary responsibility

[16] Order of the Constitutional Court of the Slovak Republic, File No. III. ÚS 670/2017, 19.

[17] Order of the Supreme Court of the Slovak Republic, File No. 5 Obdo/76/2016, A decision on an interim measure is considered a decision on the merits of the case if the interim measure itself consumes the case. Such a situation may arise in the case of a motion for an interim measure before the commencement of proceedings, which is not followed by an action under Section 336(1) of the CDC. The proceedings end with a decision on the motion for an interim measure, which resolves the matter.

[18] Order of the Constitutional Court of the Slovak Republic, File No. IV. ÚS 13/2020, 28.

[19] Order of the Constitutional Court of the Czech Republic, File No. II. ÚS 2485/2012. Upon reviewing

for providing adequate and prompt interim protection in matters of unfair competition lies with the ordinary courts. The Constitutional Court plays only a subsidiary role, aimed at ensuring that the exercise of this jurisdiction does not exceed constitutional limits.

From the perspective of unfair competition law, it is evident that interim measures are widely used in legal practice, as demonstrated by the number of such measures issued in this field.[20] The author believes that the effectiveness of this instrument would be further enhanced if the time limit for ordering an interim measure were shortened, as is the case in nearby Hungary and the Czech Republic. Such an amendment would bring the legal regulation even closer to the purpose of interim measures—to provide immediate protection for rights that are threatened or have been infringed, and to prevent further deterioration in a competitor‘s position.

4. Interim Measures Ordered Under the Commercial Code

The Slovak unfair competition law did not, until 2018, contain a specific regulation of interim measures. Such regulation was introduced only by the amendment No. 264/2017 Coll. to the Commercial Code (Obchodný zákonník) No. 530/1991 Coll., as amended. This amendment implemented Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets). The Directive aims to harmonize the protection of trade secrets across the Member States and to establish standard rules for protection against the unlawful acquisition, use, and disclosure of trade secrets.[21] One of the instruments of trade secret protection under this framework is the interim measure available against a trade secret infringer (§ 55b of the Commercial Code). What are the key differences between interim measures ordered under the Civil Dispute Code (CDC) and those ordered under the Commercial Code?

Interim measures under the Commercial Code differ from those under the Civil Dispute Code in several important respects. The most significant include:

a) **Absence of a specific time limit** for issuing an interim measure under the Commercial Code.

b) **Introduction of the requirement of security** – under § 55b(2) of the Commercial Code, the court may order the applicant to provide security to cover potential damage or other harm that may arise as a consequence of the ordered interim measure.

c) **Security may be imposed even without an application for damages** – under § 55b(3) of the Commercial Code, security may be ordered even in the absence of an application for damages or harm resulting from the infringement of a trade secret.

decisions of ordinary courts and preliminary measures, the Constitutional Court conducts only a limited constitutionality test, i.e., an assessment of whether the decision on the motion for a preliminary measure had a legal basis, was issued by the competent authority, and is not an expression of arbitrariness.

[20] Order of the Constitutional Court of the Slovak Republic, File No. IV. ÚS 13/2020.Order of the Regional Court in Košice, File No. 4Cob/125/2020.

[21] Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:32016L0943&from=FI. [2025-12-08].

First and foremost, it is important to understand that the regulation of interim measures in the Commercial Code is *lex specialis* with respect to the general regulation in the CDC. This means that, where trade secret protection is at issue, the special regulation in the Commercial Code prevails. An Applicant who submits a motion for interim measures in such a case cannot choose between the procedural provisions under the CDC and those under the Commercial Code.

The court may order an interim measure under the Commercial Code only based on a written application that meets all prescribed statutory requirements.

Section 55b(1) of the Commercial Code lists four types of obligations that the applicant may request, namely:

i. An order to cease or prohibit the use or disclosure of the trade secret.
ii. A prohibition on the manufacture, offering, placing on the market, or use of goods infringing rights to a trade secret.
iii. A prohibition on the import, export, or storage of goods infringing rights to a trade secret for their manufacture, offering, placing on the market, or use.
iv. The seizure or delivery of goods that infringe rights in a trade secret, including imported goods, to prevent their being placed on the market or released into circulation.

The application must be supported by all relevant documents and evidence submitted by the applicant to demonstrate entitlement to trade secret protection. The court may also invite the owner of the trade secret to supplement the evidence, particularly if the following have not been established:

– the existence of a trade secret,
– the applicant's proprietary right to the trade secret,
– the infringement or endangerment of the trade secret.

The principle of proportionality plays a key role in deciding whether to order an interim measure. In applying this principle, it must be taken into account that the measure must be proportionate to the purpose of protecting the trade secret. The objective is to ensure the smooth functioning of the market, particularly in the field of innovation, while ensuring that the interim measure has a deterrent effect against the unlawful acquisition and use of trade secrets. On the one hand, protection against infringement must be secured; on the other hand, market conditions must not be interfered with in a manner that would be disproportionate.

Similar to interim measures ordered under the CDC, the legislature provides the applicant with the option of obtaining a unilateral advantage in the form of rapid, adequate protection without complete evidentiary proceedings. In the interest of procedural equality, this imbalance is appropriately counterbalanced by the applicant's liability for damage caused by the interim measure. Moreover, unlike the procedural rules in the CDC, the Commercial Code expressly authorizes the court to order the applicant to provide security.[22] to cover damages or other harm that the interim

[22] This is not a new institution in our legal system. The possibility for a court to impose a financial security on the applicant for an urgent measure is provided for in Section 13(1) of Act No. 506/2009 Coll. on Trademarks, as amended.

measure may cause. The amount of the security and the deadline for its deposit are determined by the court (§ 55b(2), second sentence, Commercial Code). If the applicant fails to provide the security, the court will dismiss the application for the interim measure.

In judicial practice, over almost 8 years since the adoption of the new regulation, no decision has been identified in which a general court has ordered an interim measure solely on the basis of the procedural provisions of § 55b of the Commercial Code. This is a remarkable phenomenon, especially given that the regulation in the Commercial Code was adopted for the very purpose of providing rapid and specialized protection against the unlawful handling of trade secrets, in accordance with European Union requirements.

Scholarly literature has likewise devoted only minimal attention to this issue.[23] – in contrast to the extensive discussion that similar regulations have generated abroad.[24] A partial exception is the commentary contained in the major commentary on the Commercial Code.[25]

A significant and effective form of satisfaction in practice is the right to publish the judgment (§ 55(2) CDC). This instrument combines several functions: it has a moral and reparative character (rectifying information in the eyes of the public and business partners), but also a distinctly punitive character, as the unsuccessful party bears the costs of publication. For the effectiveness of this instrument, however, the precise formulation of the claim is crucial. The judgment must specify precisely the scope, form, and manner of publication (the specific periodical, placement, font size, and time limit). Without such precision, the order becomes unenforceable in practice, as media operators may refuse to publish an indeterminate text.

Conclusion

The procedural instruments of Slovak law provide competitors with a wide range of options for protection against unfair competition. Cease-and-desist and removal claims form the foundation of private-law protection. Their strength lies in their ability to stop ongoing unlawful conduct and eliminate its consequences, including in the online environment, where content can persist and be widely disseminated. Their effectiveness, however, is significantly limited by their reliance on the initiative of injured parties. Unlike in German practice, where professional and consumer associations systematically

[23] KUBINEC, M. Obchodné tajomstvo v zrkadle zmien Obchodného zákonníka. In *Banskobystrické dni práva III.: „Identifikácia únosnej miery autonómie právnych odvetví a súčasnej potreby ich synergie“*. Banská Bystrica : Belianum, 2018, s. 142 – 153; ZLOCHA, Ľ. Procesné aspekty uplatňovania nárokov z nekalej súťaže [elektronický dokument]. In *Aktuálne otázky práva hospodárskej súťaže a obchodného práva : zborník z vedeckej konferencie organizovanej dňa 3.12.2018 Ústavom štátu a práva SAV v Bratislave*. Bratislava : Ústav štátu a práva SAV, 2018, s. 95 a nasl.

[24] KALBFUS, B. Die EU-Geschäftsgeheimnis-Richtlinie. In GRUR. 2016, č. 9, s. 1009–1017. KALBFUS, B. Angemessene Geheimhaltungsmaßnahmen nach der Geschäftsgeheimnis-Richtlinie. In GRUR-Prax. 2017, č. 17, s. 391–416. BÖHM, R. – NESTLER, A. EU-Richtlinie zum Know-how-Schutz: Quantifizierung des Schadensersatzes. In GRUR-Prax. 2018, č. 8, s. 181–202.

[25] CSACH, K. Neodkladné opatrenia. In OVEČKOVÁ, O. *Obchodný zákonník. Veľký komentár. Zväzok I.* Bratislava : Wolters Kluwer SR, 2022, s. 413 – 422.

rely on cease-and-desist actions and actively shape the case law (for example, in the area of greenwashing), Slovak consumer associations appear in this field only exceptionally. Lower procedural activism results in fewer precedential decisions and slows the formation of stable standards for new forms of unfair competition. The case law that does emerge nevertheless has substantial interpretative influence in other proceedings and contributes to the gradual unification of judicial practice.

Adequate satisfaction complements these claims by adding a compensatory and sanction-preventive dimension. It allows the law to respond to interference with reputation, goodwill, or market position where non-monetary forms of satisfaction are insufficient. Its effectiveness depends on courts‘ willingness to award sums that achieve not only a compensatory but also a genuinely preventive effect.

Claims for damages or unjust enrichment remain, in the context of unfair competition, rather exceptional and supplementary instruments. The strict evidentiary standard regarding causation between the infringer’s conduct and specific pecuniary damage is difficult to meet under dynamic market conditions.

Interim measures under the CDC represent, in practice, the most important procedural instrument of protection and are often the only means capable of providing effective intervention within a short timeframe. The fact that the court may decide without a hearing, based on a reduced evidentiary standard (a prima facie showing suffices), and under certain circumstances even without a subsequent obligation to file an action on the merits, corresponds entirely to the dynamic nature of unfair competition disputes.

The specific regulation of interim measures in the Commercial Code (Obchodný zákonník) for the protection of trade secrets represents an additional qualitative step forward, which has not yet been fully exploited by Slovak legal practice. The specialized regime under § 55b of the Commercial Code reflects the particularities of interferences with trade secrets, allows the court to impose targeted obligations on the infringer, and introduces the institution of security, thereby more precisely balancing the interests of the applicant and the obligated party.

The actual effectiveness of procedural instruments depends not only on their statutory design but also on the claimant’s legal expertise and strategic approach, which must appropriately combine the available protective mechanisms. The law allows the concurrent assertion of cease-and-desist and removal claims together with a claim for adequate satisfaction, thereby strengthening the comprehensiveness of the private-law response to unfair competition. These claims may be procedurally reinforced by an application for an interim measure, which provides immediate protection even before a decision is issued on the merits.

In certain forms of unfair competition, particularly in misleading advertising, the possibilities of public-law intervention should not be overlooked. Act No. 147/2001 Coll. on Advertising makes it possible to sanction specific forms of misleading or covert advertising without requiring the injured party to initiate civil proceedings immediately. Such a parallel approach enhances overall protection effectiveness and accelerates the elimination of unlawful practices from the market.

Compared to the Czech Republic and, especially, to Germany, which serves as the benchmark in the fight against unfair competition, the Slovak Republic possesses, in principle, comparable procedural instruments. However, the level of procedural activism among entitled entities is substantially lower. Increasing this level of activity, supporting strategic litigation by associations, and making more consistent use of existing tools are essential prerequisites for ensuring that the potential of the current legal framework is reflected in genuinely adequate protection against unfair competition.

References

BÖHM, R. – NESTLER, A. EU-Richtlinie zum Know-how-Schutz: Quantifizierung des Schadensersatzes. In GRUR-Prax. 2018, č. 8, s. 181–202.

CSACH, K. Neodkladné opatrenia. In OVEČKOVÁ, O. Obchodný zákonník. Veľký komentár. Zväzok I. Bratislava : Wolters Kluwer SR, 2022, s. 413–422.

GSELL, B. – MEYER, S. How to Combat 'Greenwashing'. In Journal of European Consumer and Market Law (EuCML), 2025, č. 1, s. 23.

KALBFUS, B. Die EU-Geschäftsgeheimnis-Richtlinie. In GRUR. 2016, č. 9, s. 1009–1017.

KALBFUS, B. Angemessene Geheimhaltungsmaßnahmen nach der Geschäftsgeheimnis-Richtlinie. In GRUR-Prax. 2017, č. 17, s. 391–416.

KOPČOVÁ, R. Osoby aktívne legitimované v sporoch z nekalej súťaže. In Právnické listy. Plzeň: Wolters Kluwer, 2025, č. 1, s. 23–30.

KUBINEC, M. Obchodné tajomstvo v zrkadle zmien Obchodného zákonníka. In Banskobystrické dni práva III. Banská Bystrica: Belianum, 2018, s. 142–153.

MORAVČÍKOVÁ, A. Odškodnenie nekalosúťažného konania primeraným zadosťučinením. In VOZÁR, J. (ed.) Zodpovednosť v práve. Bratislava: Wolters Kluwer, 2019, s. 209–218.

ONDREJOVÁ, D. Právní prostředky ochrany proti nekalé soutěži. Praha : Wolters Kluwer ČR, 2010.

PARTSCH, C. – RUMP, L. Auslegung der „angemessenen Geheimhaltungsmaßnahme" im Geschäftsgeheimnis-Schutzgesetz. In NJW. 2020, s. 118.

STRÉMY, J. Právna úprava nástrojov ochrany spotrebiteľa pred nekalou súťažou. In Banskobystrické dni práva II. Banská Bystrica: Belianum, 2017, s. 170–179.

ZAVADOVÁ, D. Náhrada škody a určovanie výšky škody v sporoch vo veciach nekalej súťaže. In Justičná revue. 2016, č. 12, s. 1395–1407.

ZLOCHA, Ľ. Nárok na primerané zadosťučinenie. In Právny obzor. 2020, č. 3, s. 198–210.

ZLOCHA, Ľ. – STRÉMY, J. Verejnoprávna a súkromnoprávna regulácia influencer marketingu. In Potravinové právo 2024. Trnava : Trnavská univerzita, 2024, s. 84–99.

ZLOCHA, Ľ. Zneužitie doménových mien v nekalej súťaži. In Právny obzor. 2017, č. 6, s. 595–610.

ZLOCHA, Ľ. Procesné aspekty uplatňovania nárokov z nekalej súťaže [elektronický dokument]. In Aktuálne otázky práva hospodárskej súťaže a obchodného práva. Bratislava : Ústav štátu a práva SAV, 2018, s. 95 a nasl.

Case Law

Decision of the High Court in Prague, File No. 3 Cmo 684/95.

Order of the Supreme Court of the Slovak Republic, File No. 4 Obo 4/2000.

Decision of the Supreme Court of the Slovak Republic, File No. 3 Obo 95/2005.

Decision of the Supreme Court of the Slovak Republic, File No. 5 Obo 138/2006.

Judgment of the Regional Court in Brno, File No. 57 Ca 49/2006.

Decision of the Supreme Court of the Slovak Republic, File No. 2 Cdo 278/2007.

Order of the Constitutional Court of the Czech Republic, File No. II. ÚS 2485/2012.

Order of the Supreme Court of the Slovak Republic, File No. 5 Obdo/76/2016.
Order of the Constitutional Court of the Slovak Republic, File No. III. ÚS 670/2017.
Order of the Regional Court in Bratislava, File No. 4Cob/230/2017.
Order of the Constitutional Court of the Slovak Republic, File No. IV. ÚS 13/2020.
Order of the Regional Court in Košice, File No. 4Cob/125/2020.
LG Kiel, Judgment of 2 July 2021, Case No. 14 HKO 99/20.
LG Konstanz, Judgment of 19 November 2021, Case No. 7 O 6/2021 KfH.
OLG Düsseldorf, Judgments of 6 July 2023, Case Nos. I-20 U 72/22 and I-20 U 152/22.
Order of the Supreme Court of the Slovak Republic, File No. 5 Obdo 9/2023, R 13/2025.
BGH, Judgment of 27 June 2024, Case No. I ZR 98/23.

Online Sources

Wettbewerbszentrale. Available at: https://www.wettbewerbszentrale.de
"The Six Sins of Greenwashing." Available at:
https://sustainability.usask.ca/documents/Six_Sins_of_Greenwashing_nov2007.pdf