Dear clients and business friends,

Unlike the EU, Switzerland has hitherto failed to enact specific rules governing electronic commerce. This is going to change now with the revised Federal Act on Unfair Competition (UCA), at least to a limited degree.

In addition, legislator has also established new and explicit rules on fair competition in the context of address book and advertising fraud, snowball schemes, promises of prizes, and telephone directory entries.

The amendments enacted by the National Council and the Council of States to the UCA have to a large extent been given legal effect by the Federal Council per 1 April 2012.

The present issue of Legal News should provide readers with an initial overview of the most important changes to the UCA.

For those amendments to Art. 8 UCA affecting the use of general terms and conditions coming into force on 1 July 2012, reference is made to a separate issue of Legal News to be published shortly.

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1. Directories and Advertising Orders

A recurring source of problems and unpleasant surprises in the past were providers selling private individuals or companies opaque register entries and ads at high prices.

In future, anyone using quotation forms, correction offers or the like for entries in industry, telephone, trademark or other directories, or for placing ads, shall be deemed to have acted unfairly within the meaning of Art. 3 (1) let. p. UCA where such person fails to provide the following indications on these documents, in large lettering and in a clearly legible place:

- The fact that the offer is subject to compensation;
- The private nature of the offer;
- The contract term;
- The overall price for the contract term;
- Format, minimum number of issues, the last publication date and the scope of geographic distribution.

In addition to the new letter q., subject to which the dispatch of invoices for the above mentioned “products” without a corresponding order is qualified as unfair, the legislator has also enacted stronger provisions against the sadly widespread practices of address book fraud and directory trolls.

2. Electronic Commerce

In 2005, the Federal Council deemed that steps towards enacting federal legislation on electronic commerce were unnecessary and therefore suspended the process. One provision, however, has now found its way into becoming law through the revised UCA: Whoever offers goods, works or services by means of electronic commerce, must comply with the following provisions under the newly enacted Art. 3 (1) let. s. UCA:

- Section 1: Provide information with regard to his or her identity as well as his or her postal and electronic contact details;
- Section 2: Provide information on the different technical steps to follow to conclude the contract;
- Section 3: Make available the technical means which make it possible to recognise and correct input errors prior to placing an order;
- Section 4: Immediately provide electronic confirmation that an order has been placed.

The term “electronic commerce” is solely limited to procurement of products directly via the Internet, and does not cover the conclusion of a contract via email. Whoever has already purchased goods over the Internet should already be familiar with the above guidelines.
The provisions are closely aligned with those of Directive 2000/31/EC on electronic commerce. The latter provisions must in any event be complied with where a Swiss online seller solicits costumers in the EU.

However, the new rules set out in UCA and the aforementioned EU Directive differ in one significant way: Whereas information on identity and the postal and electronic contact details must be disclosed to all customers under both EU and Swiss law, the requirements under Sections 2 to 4 of Art. 3 (1) let. s UCA discussed above only apply under EU law for commercial transactions with consumers (business to consumer). Under Swiss law, however, details on the different technical steps to follow to conclude the contract, the rules on identification and correction of input errors, as well as the mandatory electronic confirmation of purchase also apply in electronic commerce transactions involving business customers (business to business).

The revised UCA does not contain any provisions on the requirements pertaining to the inclusion and application of general terms and conditions (GTC) in electronic commerce, which are therefore governed by the general rules developed by the case law (for more on this, see the separate issue of Legal News to be published shortly).

3. Additional Substantive Changes to UCA

- **Snowball, avalanche and pyramid schemes**: Whoever offers another person the prospect of receiving goods, premium payments or other consideration, whereby the real aim is not the sale or consumption of goods and services but rather to solicit other people, is deemed to be acting unfairly under the newly enacted Art. 3 (1) let. u UCA.

- **Promises of prizes**: Whoever, in the context of a competition or lucky draw, promises another person a prize and who makes participation contingent on using an expensive telephone number, payment of processing fees, the purchase of goods or services, or participating in a sales event, advertising drive or another lucky draw, is deemed to be acting unfairly under the newly enacted Art. 3 (1) let. t UCA.

4. Formal Amendments to the UCA

Where the Confederation deems it necessary to protect the public interest, it is empowered, as hitherto, pursuant to the newly revised Art. 10 UCA, to sue in the event that Switzerland’s image abroad becomes threatened and where the persons concerned reside abroad, but the Confederation is also newly empowered to act where the interests of several persons in Switzerland or a group of persons belonging to an economic sector, or other collective interests are threatened or compromised. In order to protect the public interest, the Federal Council may also now inform the public about such unfair practices, as well as naming the firms involved. These rules allow the State to intervene where it might not be worth taking legal action by the affected parties due to the small sums involved as a result of damages incurred by unfair conduct, or where it might be impossible for them to take action for other reasons.

5. Conclusion

The new UCA provides persons affected by unfair competition and in a secondary capacity the State, with tools to take legal action against unethical and, thanks to the newly enacted legislative amendments, now unfair commercial practices across a range of different areas of life. For companies, the new provisions on directories and advertising orders, provide the possibility of taking action against perpetrators of address book fraud and directory trolls. At the same time, the new provisions on electronic commerce also challenge companies to review the legal compliance of their own online operations with regard to contractual arrangements with both consumers and business clients.

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