

## CROSS-BORDER UNFAIR COMPETITION CASES IN ONLINE ENVIRONMENT – THE EU CONFLICT-OF-LAWS PERSPECTIVE IN TERMS OF LEGAL CERTAINTY AND PREDICTABILITY

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*Globalization in general and free movement (of goods, services, persons, and capital) within the EU in particular promote cross-border transactions. Massive use of electronic means of communication foster cross-border dimension of private law relationships. As a result, issues that could have once been addressed almost exclusively at a national level require a conflict-of-laws approach. The same is also true for cases involving acts of unfair competition. For example, misleading advertising or defamation of reputation uploaded online and being accessible world-wide can affect interests of consumers or competitive relations, or interests of solely one competitor in various states. The two key questions every aggrieved party in such cases will inquire are: (i) where to file an action (what courts are competent), and (ii) what law will apply. The focus of this paper centers the second issue.*

*Due to the transfer of legislative competences within the field of private international law from the Member States to the EU, EU measures have to a large extent replaced national legislation. Rules for determining the governing law for non-contractual obligations in cross-border cases are almost comprehensively covered by the Rome II Regulation, while Article 6 of this Regulation is specifically devoted to non-contractual obligations arising out of acts of unfair competition (and of a restriction of free competition). The said provision is intended to provide a special rule in relation to the general one under Article 4 of the Regulation, in order to reflect the requirement of legal certainty and predictability of both the party aggrieved and the party liable. However, following Professor Heller's assumption, the author claims and will demonstrate that the interpretation, range of application of this provision and its relation to other conflict rules remain unclear. As a result,*

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*such a conflict rule can hardly meet the requirement for legal certainty of the parties, foreseeability of the court settlement, and predictable and reasonable balance between the interests the party aggrieved and the party liable, all being the essential elements of the Rome II Regulation.*

*The aim of this paper is to critically analyse the conflict rule under Article 6 Rome II Regulation, and to contribute to re-opening the discussion in order to overcome the existing uncertainty as to the interpretation and applicability of the provision at hand. To achieve the objective, the defined piece of legislation will be analyzed in a broader context, having regard to other EU PIL instruments (the Brussels Ibis Regulation and the Rome I Regulation), particularly scrutinizing existing decisions of the Court of Justice of the EU in matters related to unfair competition, and last but not least interpreting legal doctrine and standpoints of various author on this matter.*

*As a result, the paper will offer a critical view of the existing EU conflict rules on cross-border unfair competition. The author, following the conclusion that the current state of legislation does neither fully, nor proportionally reflect the principle of legal certainty and predictability, will present in what aspects she sees gaps and weak points of the existing regulation and suggest how these should or could be diminished.*

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