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Topic: Legal framework of combating unfair competition in an international and comparative perspective: room for standardisation among diversity?

Standardisation of the legal framework pertaining to combating unfair competition at an international level would be beneficial for the certainty of international trade. The respective framework is, however, quite scant. In practice it is limited to art. 10 bis of the Paris Convention for the Protection of Industrial Property, whereas the issue of whether the general reference in art. 2(1) of TRIPS to the Paris Convention also extends to its art. 10 bis, is controversial. Attempts towards standardisation of this area of law (such as the 1996 WIPO Model Provisions) are confronted with a diversity of national models of protection against unfair competition which are deeply enrooted in domestic legal systems (or even with a lack of recognition of unfair competition law as a separate branch of law). This diversity is clearly visible between common law countries and civil law countries. It not only concerns respective models of protection against unfair market behaviour, but, in the context of IP protection, the scope to which unfair competition law could supplement the protection granted by exclusive IP rights (eg. the issue of parasitic competition, protection against misappropriation versus misrepresentation), or the extent to which consumer protection should be embraced by unfair competition law. Without understanding this diversity it is not possible to move towards either a comprehensive or partial standardisation. The aim of the presentation is therefore not only to discuss the existing international regulations in this area, but to concisely identify the main differences in a comparative perspective, taking into account the US law, selected laws of European countries, as well as the existing EU standards contained in respective EU directives, notably the Unfair Commercial Practices Directive, with a view to subsequently identify the challenges of improving the standardisation in this area in international law.