The OSCAR PUBLISHING Services
International Journal of Law And Criminology

VOLUME Vol.05 Issue06 2025
PAGE NO. 44-50
DOI 10.37547/ijlc/Volume05Issue06-10

Issues of Implementation of Article 10bis Of the Paris Convention into National Legislation

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Received: 25 April 2025; **Accepted:** 21 May 2025; **Published:** 23 June 2025

Abstract: This article examines the issues related to the implementation of Article 10bis of the Paris Convention (1883) into national legal systems, with a particular focus on the legislation of the United States and the Republic of Uzbekistan. Special attention is given to the analysis of the principle of “effective protection against unfair competition,” its substance, and the challenges of its implementation under contemporary conditions. A comparative analysis is conducted of the legislative approaches currently in force in the United States (Lanham Act, Sherman Antitrust Act, Federal Trade Commission practice), the European Union (TFEU, EU Directives), Japan (UCPA), and Uzbekistan (the 2023 Law “On Competition”). The article identifies existing enforcement issues related to digital platforms, the use of artificial intelligence, transnational cases of unfair competition, and the regulation of commercial data. The study substantiates the need for further modernization of legislation to ensure comprehensive legal protection in line with international standards under the Paris Convention.

Keywords: Paris Convention, Article 10bis, unfair competition, effective protection, implementation, Lanham Act, competition law, digital economy, Uzbekistan, international law.

Introduction: The Paris Convention for the Protection of Industrial Property of 1883 is one of the key international legal instruments governing the protection of industrial property rights, including trademarks, at the international level. It not only enshrines rights to intellectual property objects but also establishes mechanisms for their legal protection across borders. In this context, Article 10bis of the Convention plays a particularly important role, as it imposes obligations on member states to prevent acts of unfair competition and to ensure effective legal protection against such acts within their national legal systems, taking into account their specific legal frameworks and economic conditions.

This article, based on the principle of national treatment (Article 2 of the Convention), obliges member states to grant foreign individuals the same legal guarantees as their own nationals. As a result, a trademark protection system is established that is aimed not only at safeguarding proprietary rights but also at ensuring fair competition, protecting consumers from deception, and maintaining an honest and transparent market environment.

An important milestone in the development of the provisions of Article 10bis was the adoption of amendments at the Lisbon Conference of 1958, which significantly expanded the scope of the concept of "unfair competition," adapting it to the increasing complexity of international economic relations. Subsequently, the norms of Article 10bis were further developed in the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1994), which harmonized the rules of the Paris Convention with the international trade system by establishing more specific standards for trademark protection, liability for infringements, and enforcement measures.

The phrase "effective protection" contained in Article 10bis obliges states not only to adopt formal legislative acts but also to ensure their practical enforcement through judicial and administrative mechanisms. From a scholarly perspective, the effectiveness of protection is assessed based on the precision of legislation, the efficiency of judicial procedures, and the effectiveness of enforcement measures. This approach makes it possible to strike a balance between international

standards and the specific features of national regulation, thereby ensuring legal stability and the protection of market participants.

In particular, within the U.S. legal system, protection against unfair competition has been developed in accordance with the international obligations set forth by the Paris Convention. Central to this framework is the Lanham Act, enacted in 1946, which serves as the primary legal source for trademark protection and the prevention of unfair competition. A key provision is § 43(a) (15 U.S.C. § 1125(a)), which allows for legal action against false advertising, the use of misleading designations, and acts that harm business reputation. In addition, the Act provides legal remedies such as the recovery of damages, injunctive relief, and compensation for harm caused.

From an institutional perspective, the central role in ensuring this protection is played by the United States Federal Trade Commission (FTC), which enforces consumer rights and fosters a fair competitive environment in the marketplace, thereby facilitating the implementation of these norms. This systemic approach ensures the full realization of the principle of "effective protection" not only at the legislative level but also through practical enforcement mechanisms. A vivid example of this is the legal dispute between Pizza Hut and Papa John's . In this case, the court, referring to the Lanham Act, prohibited the use of the slogan "Better Ingredients, Better Pizza" by Papa John's, as it created a false impression in the minds of consumers regarding the competitive superiority of the company's products . Such cases clearly demonstrate the effectiveness of the legal protection mechanism against unfair competition provided under U.S. legislation.

The second challenge in applying the principle of "effective protection against unfair competition" under U.S. law lies in the system's prioritization of consumer protection, often at the expense of addressing disputes between competitors. For instance, in the Volkswagen case, the U.S. Federal Trade Commission (FTC) and the Environmental Protection Agency (EPA) focused primarily on protecting consumer rights and remedying environmental damage. However, issues related to the harm suffered by competitors such as Ford and Toyota were not given sufficient consideration .

While the Paris Convention requires the protection of both consumers and competitors and their products, U.S. law imposes a high evidentiary threshold for competitors to prove harm typically requiring detailed economic analysis. This creates additional financial and time burdens, making enforcement less accessible for competitors. As a result, the principle of "effective protection" is realized more robustly for consumers, while being slower and less responsive for competitors. This reflects the consumer-centric orientation of the U.S. system and the secondary role that competition law plays in such contexts. This situation indicates that the American legal framework does not fully comply with the requirements of the Paris Convention, which calls for equal protection of both consumers and market competitors.

The third key issue in implementing the principle of "effective protection against unfair competition" under the Lanham Act lies in the complexity of judicial procedures. This problem is particularly acute for small and medium-sized enterprises (SMEs). Initiating legal proceedings related to trademark infringement or false advertising requires significant financial resources—including legal fees, expert consultations, market research, and consumer surveys—which may amount to hundreds of thousands of dollars. Moreover, such litigation can drag on for years. A vivid example of this situation is the protracted legal battle in Qualitex Co. v. Jacobson Products Co . In such circumstances, the ability of SMEs to access "effective protection" is substantially limited, and in practice, the legal mechanisms become largely accessible only to financially stronger entities. This contradicts the purpose of the Paris Convention, which aims to ensure equal legal protection for all. Thus, the procedural complexity of cases brought under the Lanham Act leads to unequal conditions, restricting SMEs from obtaining effective protection and undermining the principles of equal treatment and protection enshrined in the Paris Convention.

The next, fourth issue in applying the principle of "effective protection against unfair competition" as set forth in Article 10bis of the Paris Convention is the limited resources of the U.S. Federal Trade Commission (FTC). Although the FTC is granted broad authority under the Federal Trade Commission Act, its budgetary and personnel resources are constrained, preventing it from addressing all instances of unfair competition. The FTC tends to focus on large-scale cases—such as the Volkswagen case, which resulted in a $14.7 billion penalty—while instances of unfair competition in smaller market segments or at the local level often go unaddressed.

In 2020, the FTC's annual budget amounted to $331 million , which is insufficient in relation to the scale of the U.S. economy. Moreover, the agency's primary mission centers on consumer protection, leading to comparatively less attention being paid to disputes between competitors. This situation reveals that the principle of "effective protection" is not fully realized at the national level, as administrative enforcement

efforts are primarily directed at the actions of large corporations, while the interests of small businesses may be overlooked. Therefore, the limited resources of the FTC and its consumer-focused mandate hinder the comprehensive and equitable application of the principle of "effective protection against unfair competition" in the United States.

The fifth issue in implementing the principle of "effective protection against unfair competition," as established in Article 10bis of the Paris Convention, concerns the growing incidence of unfair competition on digital platforms—particularly in the realms of e-commerce and social media—while the Lanham Act and the Federal Trade Commission (FTC) framework were originally designed to regulate traditional, offline markets.

The existing legal instruments are often insufficiently responsive or precise when addressing emerging challenges such as the proliferation of counterfeit trademarks or deceptive advertising on platforms like Amazon or eBay. For example, in the 2019 case Williams-Sonoma v. Amazon , Williams-Sonoma alleged that Amazon had unlawfully used its brand. However, the litigation was protracted, largely due to the evidentiary complexities of proving harm in a digital environment—such as the need for algorithmic audits and behavioral data analysis.

This case exemplifies the legal system's limited adaptability to the realities of the digital economy and highlights a critical gap between the rapidly evolving nature of unfair competition and the outdated regulatory tools still in use. Consequently, the principle of "effective protection" is difficult to fully realize in the digital context, where legal norms, enforcement mechanisms, and evidentiary standards remain in a state of transition.

According to a number of scholars , the adaptation of U.S. legislation to technological changes has been slow, thereby reducing the effectiveness of implementing the principle of "effective protection" in the online environment. This issue reflects a broader challenge in aligning the provisions of the Paris Convention with modern economic conditions. As a result, laws originally designed for traditional markets prove to be largely ineffective when combating manifestations of unfair competition in the digital sphere.

Finally, the sixth and last problem in the implementation of the principle of "effective protection against unfair competition," as enshrined in Article 10bis of the Paris Convention, lies in the insufficient severity of sanctions imposed on large corporations under the Lanham Act and FTC legislation. Although these laws provide for measures such as fines, injunctions, and compensatory damages, such sanctions often lack significant financial impact on major companies. For example, in the Volkswagen case, a $14.7 billion fine may appear substantial, but when considered against the company's total revenue of over $240 billion in 2016 , the penalty had a relatively limited deterrent effect.

From an economic perspective, when the cost of a penalty is lower than the benefit gained from the violation, its preventive function is weakened. This situation fails to effectively deter large corporations from engaging in unfair practices, which ultimately undermines the long-term effectiveness of the principle of "effective protection." Thus, the insufficient stringency of sanctions against major corporations significantly diminishes the practical enforcement of the principle of protection against unfair competition.

The second paragraph of Article 10bis of the Paris Convention for the Protection of Industrial Property states that "any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition." This legal provision holds significant importance in the international system for the protection of industrial property and the maintenance of fair competition.

From a legal standpoint, this provision formulates a general definition of unfair competition, serving as the foundation for the development of corresponding regulatory mechanisms within the national legislation of member states. The term "honest practices" embedded in this norm reflects ethical and fair standards of business conduct; however, the specific content and interpretation of this term are shaped by the sociocultural, economic, and legal characteristics of each jurisdiction. This allows for the adaptation and differentiation of relevant legal norms depending on the conditions of legal enforcement in different countries.

The provision is of an imperative nature, obliging member states to implement effective legal mechanisms to combat unfair competition in accordance with their international commitments. At the same time, given its general and framework-based character, it does not have direct effect and requires further elaboration through national legislation. In different legal systems, the relevant rules may be incorporated into civil codes or into specialized antitrust or competition laws.

The concept of "honest practices in industrial or commercial matters," as formulated in the second part of Article 10bis of the Paris Convention, is not defined in detail within the text of the Convention itself, which

highlights its universal and adaptable nature. From a legal perspective, this term refers to ethical and fair standards of conduct that have developed within the context of economic and commercial practice.

At the same time, the specific content of this concept is clarified within the framework of national legal systems and judicial practice in individual countries. For example, in the United States, under Section 5 of the Federal Trade Commission Act, "unfair or deceptive acts or practices" include false advertising, consumer deception, and other dishonest conduct, which are treated as violations of fair business standards.

In the European Union, Directive 2005/29/EC is based on the criterion of "professional diligence" and requires adherence to ethical norms in competitive conduct. In Japan, under the Unfair Competition Prevention Act (UCPA), the use of signs similar to a competitor's trademark (Article 2(1)(i) UCPA) is considered unfair based on moral standards generally accepted in trade. Scholarly research (Bently & Sherman, 2014) emphasizes that this concept is dynamic and context-dependent, relying on industry standards and evolving ethical values, which grants courts broad discretion in its interpretation.

Thus, the notion of "honest practices in industrial or commercial matters" may be interpreted differently across national legislation and judicial practice, but its overarching aim remains the promotion of fairness and ethical standards in competitive relations.

At the same time, the concept of "honest practices in industrial or commercial matters" is not without certain drawbacks. Due to the lack of a clear definition in the Paris Convention, there is a risk of subjective interpretation of this category. As a result, its application varies across jurisdictions. For instance, in the European Union, the criterion of "professional diligence" is applied rigorously, whereas in other countries greater emphasis is placed on customary trade practices. This variability hinders legal predictability for economic operators and complicates business planning.

Moreover, the interpretation of "honest practices" depends on national legislation and judicial practice, leading to a lack of uniform standards in international trade. For example, in the United States, the focus is primarily on consumer protection, while in Japan, greater priority is given to safeguarding the commercial interests of competitors . This discrepancy creates additional legal uncertainty and operational challenges for transnational companies.

Furthermore, the abstract nature of this concept complicates the collection and presentation of evidence in legal proceedings . Demonstrating that a specific competitive behavior violates "honest practices" often requires expert opinions or a detailed analysis of historical commercial conduct, which entails additional time and financial costs. As a result, the effectiveness of the provision is diminished, and the resolution of commercial disputes is frequently delayed by lengthy litigation, hindering the timely restoration of fairness for the injured party.

The provision in the second paragraph of Article 10bis of the Paris Convention, which states that "any act of competition contrary to honest practices in industrial or commercial matters" shall be considered an act of unfair competition, significantly broadens the legal scope of its application. This norm encompasses a wide range of commercial practices aimed at gaining competitive advantages through unacceptable or unlawful methods.

In particular, under the U.S. legal system, such actions— including false advertising, consumer deception, and unauthorized use of trademarks—are treated as forms of unfair competition under Section 43(a) of the Lanham Act. These actions give rise to civil liability and may result in remedies such as injunctions, damages, and corrective measures .

Under European Union law, pursuant to Regulation (EU) No. 2019/1150 and Directive 2006/114/EC, the dissemination of false or misleading information to consumers, as well as actions that damage the business reputation of competitors, are classified as manifestations of unfair competition. In Japanese legislation, Article 2 of the Unfair Competition Prevention Act (UCPA) provides a comprehensive list of 15 specific types of unlawful conduct, including the misappropriation of trade secrets and the deception of customers, thereby enabling the flexible application of legal norms in a variety of situations.

The concept of an "act of unfair competition," as set forth in the second part of Article 10bis of the Paris Convention, encompasses conduct that is contrary to "honest practices in industrial or commercial matters." From a scholarly perspective, such an act constitutes a violation of a set of moral, legal, and economic norms aimed at upholding fair and honest competition. The essence of this violation lies in the use of methods to gain competitive advantage that breach established legal and ethical standards.

In practice, acts of unfair competition often lead to significant consequences such as financial losses, damage to business reputation, loss of market share, and consumer deception.

In the United States, laws such as the Sherman Antitrust Act and the Lanham Act impose strict limitations on instances of unfair competition and

provide for corresponding legal remedies. In particular, they allow for compensation for damages resulting from the dissemination of false information intended to harm a competitor's business reputation.

In the European Union, Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) govern the prohibition of monopolies and the abuse of dominant market positions. Additionally, the Directive on Unfair Commercial Practices establishes measures to protect consumers from misleading and harmful conduct, thereby reinforcing fair competition principles within the internal market.

Thus, an act of unfair competition constitutes a legal consequence arising from conduct that violates the principle of "honest practices," with the primary aim of protecting the rights of the injured party and holding the infringer legally accountable. Despite the existence of unified international legal foundations, the interpretation of this concept varies across legal systems. Nevertheless, it is generally aimed at ensuring fair and transparent conditions for the functioning of a market economy.

At the same time, the concept of an "act of unfair competition" is associated with a number of theoretical and practical challenges, particularly due to the absence of harmonized criteria for clearly distinguishing unlawful forms of conduct. Since the definition is based on an assessment of conformity with "honest practices," it leaves room for divergent interpretations and creates the risk of legal uncertainty.

For example, in the United States, proving the dissemination of false information for commercial purposes is comparatively more straightforward. In contrast, in Japan, establishing the unlawful disclosure of trade secrets under the Unfair Competition Prevention Act (UCPA) is often accompanied by substantial evidentiary difficulties. Moreover, differing regulatory approaches can also be observed at the supranational level: in the European Union, emphasis is placed on the application of strict antitrust rules (Articles 101 and 102 of the Treaty on the Functioning of the European Union — TFEU), while in the United States, the regulatory framework is built upon a comprehensive protection of the interests of both consumers and market competitors.

These divergences highlight the complexity of applying the concept of unfair competition in a globally integrated economy and underscore the need for continued dialogue and potential harmonization to reduce legal fragmentation and promote consistent enforcement standards.

At the same time, the concept of an "act of unfair competition" is accompanied by a range of theoretical and practical challenges, primarily due to the absence of unified criteria for clearly distinguishing impermissible forms of conduct. Based on an assessment of compliance with "honest practices," this definition allows for significant variation in interpretation and creates a risk of legal uncertainty.

For instance, in the United States, proving the dissemination of false information for commercial purposes is comparatively straightforward. By contrast, in Japan, establishing the unlawful disclosure of trade secrets under the Unfair Competition Prevention Act (UCPA) often involves substantial evidentiary difficulties and procedural complexity.

Furthermore, divergent approaches to legal regulation are also evident at the supranational level. In the European Union, the focus lies on the strict enforcement of antitrust norms—namely, Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). In the United States, however, the regulatory system is based on a more comprehensive model that seeks to protect the interests of both consumers and market competitors.

These differences reflect the contextual and jurisdictional variability in the understanding and application of unfair competition laws and underscore the need for greater international coordination to enhance legal predictability and ensure more uniform enforcement in cross-border commercial relations.

The Law of the Republic of Uzbekistan "On Competition" dated July 3, 2023 (No. ZRU-850) establishes a modern legal framework for regulating and safeguarding fair competition within the national economy. The provisions of Articles 4 and 21 of this law largely align with the international legal standards set forth in Article 10bis of the Paris Convention, reflecting Uzbekistan's commitment to fulfilling its international obligations in the field of industrial property protection and the fight against unfair competition.

Specifically, paragraph 3 of part 1 of Article 4 of the Law defines unfair competition as "any competitive action contrary to fair practice in industrial or commercial activity," which essentially reproduces the core definition enshrined in Article 10bis of the Paris Convention—namely, "acts contrary to honest practices." At the same time, Uzbek legislation goes further by elaborating on this definition with a concrete list of forms of unfair competition, including the discrediting of competitors, misleading consumers, unlawful acquisition of trade secrets, misleading comparative advertising, and other forms of misconduct.

This adaptation of international provisions to the

specific features of the national legal system demonstrates a successful implementation of the Paris Convention into Uzbekistan's domestic legislation. Harmonization is particularly evident in Article 21 of the Law, which systematically enumerates specific prohibited forms of unfair competition, reflecting the most common violations encountered in practice. For instance, discrediting a competitor by disseminating false or distorted information directly corresponds to the concept of "acts contrary to honest practices" under the Paris Convention. Similarly, misleading consumers, using deceptive comparisons, and the unlawful disclosure of trade secrets are recognized under international law as established forms of unfair competition.

The establishment of legal mechanisms in Uzbekistan's legislation to combat unfair competition also contributes to the country's integration into the international trade and investment system. The harmonization of the provisions of the Law of the Republic of Uzbekistan "On Competition" dated July 3, 2023 (No. ZRU-850) with the standards of Article 10bis of the Paris Convention reflects the Republic's commitment to fulfilling its international obligations in the fields of competition law and consumer protection.

In particular, Articles 4 and 21 of the Law closely reflect the language of international instruments. For instance, paragraph 3 of part 1 of Article 4 defines unfair competition as "any competitive action contrary to fair practice in industrial or commercial activity," which is consistent with the terminology used in Article 10bis of the Convention. At the same time, Uzbek legislation offers a detailed list of specific forms of unfair competition, facilitating their practical application. This regulatory approach ensures both internal legal certainty and the strengthening of foreign investor confidence.

However, despite the progress achieved, a number of unresolved issues remain in practice regarding the adaptation of Article 10bis to the realities of the modern economic and technological landscape:

1. Regulation of digital platforms:

Although Article 4 of the Law provides a definition of "digital platform" and Article 18 establishes specific restrictions, effective enforcement mechanisms against the activities of transnational digital corporations (such as Google, Amazon, and Meta) remain limited. The technical and jurisdictional constraints of state authorities impede the full realization of the principle of "effective protection" against unfair competition in the digital environment, as enshrined in Article 10bis of the Paris Convention.

2. Lack of regulation concerning unfair competition involving artificial intelligence and algorithmic systems:

Many companies use such technologies for price manipulation, exclusion of competitors, or misleading consumers. However, the Competition Law does not include specific provisions addressing these forms of unfair competition. Existing norms—such as those in Article 21—primarily cover traditional violations (e.g., discrediting competitors, unlawful acquisition of trade secrets). This regulatory gap complicates the processes of evidence collection and legal enforcement in emerging technological contexts.

3. Transnational aspects of unfair competition:

Although Article 7 of the Law grants the State Committee for the Development of Competition and Protection of Consumer Rights authority at the national level, effective mechanisms for international cooperation in this area have not yet been fully developed. In particular, holding foreign companies accountable for violations of the rights of Uzbek consumers remains challenging due to the limited availability of international legal tools.

These challenges underscore the need for further legislative reform and international cooperation to ensure that the principle of "effective protection against unfair competition," as articulated in Article 10bis of the Paris Convention, can be fully realized in both national and cross-border contexts.

4. Insufficient regulation of data use and trade secret protection in the digital economy

The fourth issue concerns the underregulation of data usage and the protection of trade secrets within the context of the digital economy. Although Article 21 of the Law prohibits the unlawful acquisition of trade secrets, there is currently no comprehensive regulation governing the processing of big data, nor its use for market manipulation or gaining unfair competitive advantages. For the effective application of Article 10bis of the Paris Convention in the digital context, specialized legal norms and enforcement mechanisms tailored to modern technologies are required.

CONCLUSION

In summary, despite Uzbekistan's significant progress in implementing Article 10bis of the Paris Convention into its national legal system, several pressing challenges remain. These include the regulation of digital platforms, artificial intelligence, transnational competition, data circulation, pricing strategies in e-commerce, and blockchain-related economic activities. Addressing these issues will require further modernization of national legislation, the development of expert capacity in assessing unfair competition, and

the strengthening of international cooperation.

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