

APPENDIX 5

**Hogan Lovells' summary of Member States' CLP's responses
to Phase 1B parasitic copying questionnaire**

MEMBER STATE	WHICH REMEDIES ARE AVAILABLE?	CUMULATIVE - Y/N?	CHANCES OF SUCCESSFUL CLAIM IMPROVED BY UCPD AND ED?	WHO ENFORCES UCPD? HAS UCPD BEEN ENACTED TO PERMIT: (A) ONLY PRIVATE ENFORCEMENT ❶; (B) ONLY PUBLIC ENFORCEMENT ❷; (C) BOTH ❸?	IS ENFORCEMENT OF UCPD BY PUBLIC AUTHORITIES EFFECTIVE?
Austria	<p>1. Cease and desist order; 2. Publication of judgment; and 3. Damages; or 4. Account of profits</p> <p>Account of profits is not an equitable remedy but a specific possibility for the claimant to recover losses caused by the infringement. Since the burden of proof for damages is with the claimant the account for profits makes it easier for the claimant to obtain a compensation.</p>	Yes.	No.	<p>❸</p> <p>A cease and desist claim can be filed by: (1) any trader in respect of a competitor; (2) the Federal Chamber of Labour, the Federal Economic Chamber, the Presidential Conference of the Austrian Chambers of Agriculture, the Austrian Trade Union Federation, or the Federal Competition Authority. A claim for aggressive or misleading commercial practices may be filed by the Association for Consumer Information.</p>	The respondent is not aware of any enforcement by public authorities but as not all decisions of the Austrian Supreme Court are published, it can not say that there has been no such public enforcement. The respondent believes that enforcement by a private rights holder is likely to be more effective.
Belgium	<p>Remedies are available in 2 categories.</p> <p>1. <u>Injunctions</u>: (a) cease and desist order; (b) publication of the judicial decision; (c) declaratory judgment.</p> <p>2. <u>Compensation</u>: (a) damages; (b) costs.</p>	Yes. A plaintiff is entitled to claim for any of these remedies. Damages are rarely claimed since separate proceedings must be started to receive them. Some of the injunctions (publication of the judgment and declaratory judgment) will only be ordered if the judge considers them necessary to repair the damage committed.	No, as the plaintiff's chances of bringing a successful claim were very similar prior to the Directives being implemented.	<p>❸</p> <p>A cessation proceeding under Article 113 of the Market Practices and Consumer Protection Act can be brought by: (1) any interested person (e.g. a competing trader or a consumer); (2) the Ministry of Economic Affairs ("MEA"); (3) a professional union;</p>	No, it is not effective. In practice, public authorities act when the collective interests of consumers might be harmed. Public authorities rarely use the warning proceedings or start cessation proceedings to enforce the UCPD and would only do so for flagrant breaches of provisions protecting consumers. MEA has confirmed that in principle it would not take action against parasitic copying.

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		The granting of these injunctions as well as the amount of damages tends to vary according to the amount of infringed goods sold/marketed/seized.		(4) an authorised consumer protection group; (5) Ministry of Consumer Protection. Public authorities cannot enforce claims under Article 95 of the Act. If the Ministry of Economic Affairs establishes that there is a breach under the Act then before it starts cessation proceedings it may issue a warning.	
Bulgaria	Under the Civil Procedure Code, compensation is paid by the infringer to all legal and natural persons who have suffered damage, irrespective of whether it was directed against them.	N/A, as no further remedies are available.	N/A, as there are no known cases or published decisions.	② Legal proceedings are brought before the Commission for Protection of Competition (CPC) by either: (1) CPC's own decision; (2) request from a public prosecutor; (3) request from persons whose rights are being infringed or which are in danger of being infringed.	May be effective if CPC and Public Prosecutor's office are vigilant and well-informed about the possibility of infringement and the particulars of the brands at risk. As the latter is unlikely to be the case, the most efficient option would be a co-operative effort between public authorities and rights holders.

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Cyprus	<p><u>Civil remedies:</u></p> <ol style="list-style-type: none"> Injunctions. Damages. <p><u>Administrative penalties:</u></p> <ol style="list-style-type: none"> Cease and desist order. Administrative fine - up to 5% value of infringer's annual work or up to 155,000 Cyprus pounds (equivalent to €255,000). Daily fine of up to 1,000 Cyprus pounds (equivalent to €1,700) for continuing infringements. Temporary restraining order against any person responsible for infringement. 	<p><u>Civil remedies:</u> No.</p> <p><u>Administrative penalties:</u> Yes.</p>	<p>ED - no.</p> <p>UCPD - yes, the imposition of administrative penalties is strong evidence for the plaintiff in a trade mark infringement or passing off action.</p>	<p>②</p> <p>Enforcement is carried out by the Consumer Protection Authority of the Ministry of Commerce, Industry and Tourism.</p>	<p>Yes, although the only examples of it being used so far relate to counterfeit goods.</p>
Czech Republic	<ol style="list-style-type: none"> Cease and desist order. Appropriate satisfaction (either monetary or non-monetary). Compensation for damage. Unjust enrichment. <p>The plaintiff may also claim one of these remedies:</p> <ol style="list-style-type: none"> Preliminary injunction. Determination order. Securing of evidence. Publication of judgment. 	<p>Yes, for remedies 1 to 4. No, for remedies 5 to 8.</p>	<p>No, unless registered IPR have been infringed.</p> <p>Implementation of the UCPD in the Consumer Protection Act only deals with business to consumer commercial practices, not business to business practices. IP rights holder is only entitled to ask the Czech Trade Inspectorate to take proceedings.</p> <p>Implementation of the ED only deals with infringement of IPR.</p>	<p>③</p> <p>The Consumer Protection Act can be enforced by public authorities like the Czech Trade Inspectorate or other public authorities, depending on the product.</p> <p>The provisions can also be enforced by people whose rights have been violated or jeopardised as a result of unfair competition or a legal entity designed to protect the interests of consumers and competitors.</p>	<p>In response to enquiries from the respondent, the Czech Trade Inspectorate said that it is unlikely to investigate the sale of parasitic copying if no registered IPR are infringed. It tends to concentrate on counterfeiting, rather than parasitic copying.</p>

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Denmark	<ol style="list-style-type: none"> 1. Prohibition. 2. Injunction, including a preliminary injunction. 3. Destruction and recall of parasitic copies. 4. Compensation and/or damages. 	Yes.	<p>Yes, in relation to compensation.</p> <p>Implementation of the UCPD in Danish law had a very limited impact as Danish law was already compliant.</p> <p>Implementation of the ED has made it easier for rights holders to claim compensation for non-financial loss.</p>	<p>③</p> <p><u>Enforcement by public authorities:</u> Consumer Ombudsman may file a lawsuit to claim prohibition or injunction or it may issue an injunction itself if the action is clearly in breach of unfair commercial practices law and it can not be settled by negotiation.</p> <p><u>Enforcement by private rights holders:</u> more likely to bring an action against parasitic copying as they have an immediate interest to take action.</p>	<p>No. Private rights holders will usually address matters quicker through a lawsuit and will be interested in doing so since otherwise they can not get proper remedies. The Consumer Ombudsman is preoccupied with enforcing other aspects of unfair commercial practices law and probably prioritises those cases.</p> <p>There are no reported decisions of the Consumer Ombudsman having taken any action against parasitic copying, either by lawsuit or by having issued its own injunction.</p>
Estonia	<ol style="list-style-type: none"> 1. Compensatory damages. 2. Fine. 	N/A	<p>Impossible to give a definitive answer as no such claims have been brought.</p> <p>The respondent's opinion is that reliance on classical IP rights is more likely to be successful.</p>	<p>②</p> <p>Enforcement is by the Consumer Protection Board.</p>	<p>The respondent was not aware of any relevant cases. The respondent believes that the key to an effective system lies in the joint enforcement and general co-operation of the private and public sectors. Private rights holders are likely to be more interested in taking action against parasitic copies.</p>

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Finland	<p><u>In Finnish Market Court:</u></p> <ol style="list-style-type: none"> 1. Prohibition of infringing acts, breach of which is punishable by fine. 2. Order to take necessary measures to avoid and correct unfair commercial practice, breach of which is punishable by fine. 3. Publication of decision in newspapers. <p><u>In District Court:</u></p> <ol style="list-style-type: none"> 4. Damages - where a separate claim is filed, including for pure economic loss. 	Yes.	No. The UCPD did not cause any material changes in Finnish law.	① Only private rights holders may take action under the Finnish Unfair Business Practices Act, although the Market Court may notify the Consumer Ombudsman of parasitic copying cases. In rare cases, the Consumer Ombudsman may then take action to protect consumers' positions under the Consumer Protection Act.	N/A
France	<ol style="list-style-type: none"> 1. Compensatory damages based on economic damage and moral damage. 2. Cease and desist order. 3. Destruction of infringing stock. 4. Publication of the decision in the press and on the competitor's website. 5. Partial reimbursement of legal fees and the court's costs. 	Yes.	Yes, but only where the infringer is a consumer, although the respondent was not aware of any reported cases. As business to business commercial practices are not covered, the general law on unfair competition is used in relation to parasitic copying instead.	③ Any individual, private entity or consumer association may bring an action. <u>Enforcement by public authorities:</u> General Directorate for Competition Policy, Consumer Affairs and Fraud Control ("DGCCRF"), the General Directorate for the Food Industry and the General Directorate of Metrology are all entitled to act and investigate unfair commercial practices.	<p>Only a few decisions have been given in France on misleading commercial practice and unauthorised use of a trade mark or a distinctive sign.</p> <p>The DGCCRF has indicated in informal oral discussions that in the absence of any reproduction of the trade mark or distinctive sign on the suspect products, the DGCCRF is unlikely to launch investigations. It finds the concept of "parasitic copying" too broad and subjective for them to be in a position to decide whether to act. However, a complaint by a private entity, might lead them to take another look at a specific complaint.</p>

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				<p>If the DGCCRF launches an investigation under the French Consumer Code provisions that implemented the UCPD, its actions would be based on criminal law and therefore whether a prosecution was initiated would depend on the Public Prosecutor. Even if a rights holder were to ask to join the prosecution, the examining magistrate could decide to stop the proceedings or to take some time to examine the merits of the case. As the DGCCRF is bound by confidentiality requirements, even if a rights holder succeeded in being joined into the proceedings as a plaintiff, it would face difficulties in learning the details of the case before the examining magistrate began the proceedings.</p>	

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Germany	<ol style="list-style-type: none"> 1. Order to cease and desist infringing activity. 2. Order to disclose source and purchasers of infringing products. 3. Order to disclose full account for calculation of damages. 4. Order to pay damages by one of three different calculation models. 5. Reimbursement of gains on basis of unjust enrichment. 6. Publication of the judgment. 7. In exceptional cases, confiscation of profits (although not yet applied in parasitic copying cases as ordinary damages address this). <p>No order possible for seizure or destruction of infringing goods.</p>	Yes.	No, but the law is developing and the German Federal Court has not yet had an opportunity to clarify questions in this area.	<p>③</p> <ol style="list-style-type: none"> 1. Competitors of the infringing party - this includes any entity affected by the imitation of its own product. All of the remedies listed are available to it except for no. 7 - confiscation of profits. 2. Business and industry associations, if they have a credible number of companies active in the same industry field as the infringing party. Often take action at the request of a member. 3. Consumer protection entities - must be registered on a list maintained following the implementation of the European Directive 98/27/EC on Injunctions for the Protection of Consumer Interests. 4. Chambers of Commerce - almost never take action. 	No. All of the cases that have been brought to date were either brought by rights holders or business and industry associations and in each case was clearly triggered by the entity that was directly affected by the parasitic copying.

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Greece	<p><u>In regular proceedings:</u></p> <ol style="list-style-type: none"> Order to cease violation of plaintiff's rights (unauthorized/ illegal copying or use of configurations or/and other distinctive features) and desist from such unauthorized/illegal actions in the future. Payment of indemnity for the restitution of damages (actual and moral) suffered by the plaintiff. <p>As an interim measure: injunctive relief.</p>	Yes, subject to conditions.	<p>Yes, because the changes from the implementation of the UCPD reverses the usual burden of proof. Where the plaintiff is a consumer, the defendant has to show that the plaintiff's allegations concerning the unfair commercial practices are false. This is not open to a plaintiff that is a business.</p> <p>The changes to the Copyright Law from the implementation of the ED give the plaintiff the right to ask the court to order the communication of evidence (banking, financial or commercial documents), which lies in the control of the defendant. These provisions also introduce a presumption of truth for the party requesting the submission or disclosure of evidence, in case that the defendant, who is asked to provide such evidence, unreasonably fails to do so.</p>	<p>③</p> <ol style="list-style-type: none"> Consumers individually; and/ or Consumer associations; and/ or The Minister of Development. <p>In the first two cases, the procedure is judicial, whereas in the third case, the procedure is of administrative nature.</p>	<p>The Minister of Development can enforce the UCPD in certain cases of parasitic copying where there are public interest reasons, including issues related to health and safety of consumers.</p> <p>The General Secretariat for Consumers (Ministry of Employment and Social Security) can implement/enforce the consumer protection law for the protection of consumers. It has imposed several fines amounting, in total, to two hundred twenty five thousand (225.000) Euros, on 32 companies for infringements of several provisions of the consumer protection law. The fines were imposed, mainly, in relation to the carrying out of misleading commercial practices, the distribution to the market of unsafe products, the refusal to provide information in the course of examining a consumer's complaint, the use of abusive General Terms of transaction, the breach of the provisions applicable on distance contracts etc.</p>

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Hungary	Remedies available under competition law and civil law. Under competition law: 1. Cessation and prohibition of infringement. 2. Moral remedy, e.g. public statements/ acknowledgements by the infringer. 3. Seizure or destruction of infringing products. 4. Damages. 5. Provision of information concerning people involved in manufacturing and marketing of infringing products and establishment of business relations that support infringing activity. 6. Unjust enrichment.	Yes.	The UCPD was only implemented in Hungarian law 3 years ago. That has not been sufficient time for a new practice in this area to have developed.	❸ Enforcement of the UCPD involves (i) ex officio proceedings of the consumer protection authorities (ie. the National Consumer Protection Authority, the Hungarian Competition Office and the Hungarian Financial Supervisory Authority), and (ii) civil lawsuits that may be initiated by private individuals (or by the Hungarian Competition Office on their behalf) in front of the Hungarian courts. Private individuals may enforce the UCPD both by filing suit in the Hungarian courts or by initiating an investigation with the National Consumer Protection Authority. As for the latter, private individuals may by way of submission of a complaint, report the alleged infringement to the consumer protection authorities and if the competent authority decides to initiate administrative proceedings (either on the basis	Enforcement by public authorities: <u>National Consumer Protection Authority</u> : general jurisdiction for the application of Hungarian UCP law. <u>Hungarian Competition Office</u> : jurisdiction in cases where the commercial practice would have an appreciable effect on economic competition. <u>Hungarian Financial Supervisory Authority</u> : deals with cases in the financial services and banking sectors. To avoid conflicts of jurisdiction, the three authorities concluded cooperation agreements and regularly communicate with each other concerning allocation of work. No proceedings have yet been brought but the respondent believes that the active involvement of the competition authorities in consumer protection lawsuits or parasitic copying cases would deter parasitic copying.

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				<p>of a complaint or based on its official knowledge) it will be master of the case, and it may use its investigative powers to clarify the matter of facts.</p> <p><u>Enforcement by private persons or legal entities:</u> possible where the plaintiff suffers damages and can show a breach of the Hungarian UCP law. Class actions are not permitted, but plaintiffs can sue infringers jointly.</p> <p>Where an infringement affects a broad number of consumers who can be personally identified, then the National Consumer Protection Authority can intervene in the case.</p>	
Republic of Ireland	<p><u>A: Consumer Protection Act ("CPA") (implemented UCPD)</u></p> <ol style="list-style-type: none"> 1. Prohibition orders (s71). 2. Publication of a corrective statement at the infringing trader's expense (s71). 3. Prohibition order in relation to a breach of a code of practice. Breach of the prohibition order is a criminal offence, punishable by fines. 4. Written undertaking from the infringing trader that it will comply with the CPA. 	<p><u>CPA:</u> in some instances, yes.</p> <p>In all other cases, yes.</p>	<p>Yes. The implementation of the UCPD and ED in Irish law now gives the plaintiff the chance of claiming additional remedies.</p> <p>The ED in particular gives plaintiffs new tools in sourcing information on alleged infringers.</p>	<p>❸</p> <p>Prohibition orders under section 71 in the CPA can be ordered by the Court through applications made by either private rights holders or the National Consumer Authority.</p>	<p>Enforcement of consumer protection legislation is largely the National Consumer Agency's responsibility. However, the respondent is not aware of any enforcement action against parasitic copying because resources (both financial and manpower) are insufficient. It therefore falls to brand holders to take action against parasitic copying.</p>

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	<p>Breach of the undertaking will mean that a prohibition order under section 71 CPA will be issued.</p> <p>5. Damages, including exemplary damages, payable to a consumer.</p> <p>6. Compliance orders.</p> <p>7. Compensation orders(s81).</p> <p>8. Fixed Price Notices for breaches of legislation relating to prices.</p> <p><u>B: Marketing Regulations (implement directive on misleading and comparative advertising)</u></p> <p>1. Prohibition order.</p> <p>2. Prohibition order in relation to promotion of codes of conduct that contain a misleading or prohibited comparative advertisement.</p> <p><u>C: Enforcement Regulations (implement the ED)</u></p> <p>1. Order for disclosure of information.</p> <p>2. Order for recall, removal or destruction.</p> <p>3. Order for publication of judgments.</p> <p><u>D: Passing Off</u></p> <p>1. Injunctive relief.</p> <p>2. Damages or account of profits.</p> <p>3. Aggravated and/or exemplary damages.</p> <p>4. Delivery up or destruction of goods.</p>			<p>2</p> <p>Other CPA remedies (under sections 72-75 and 81) are only available to the National Consumer Authority.</p>	<p>The latest National Consumer Agency report (for 2009) describes its main enforcement activity but does not mention any enforcement activity against parasitic copying.</p>

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Italy	Remedies for unfair competition; 1. Injunction; 2. Publication of the decision in newspapers, websites or on radio or TV programmes if that would restore the damage; 3. Penalty for further violation or delay in carrying out judge's orders; 4. Damage compensation at the end of proceedings on the merits.	Yes.	No. Plaintiffs in parasitic copying cases have not used the UCPD provisions as enacted into Italian law as they are perceived as concerning mostly promotional activities.	③ Enforcement is by: (a) The Italian antitrust authority and its decisions are appealed to the Regional Administrative Court. RAC's decisions may be appealed to the Consiglio di Stato, the final court in the administrative court system. (b) Any single consumer which has an interest. (c) Any private Italian organisation that represents consumers and is included in the list managed by the Italian Ministry of Financial Affairs. (d) Any non-Italian public or private organisation recognised under the country of origin, whenever the right of a citizen of the country is jeopardised by an unfair commercial practice carried out in Italy.	There are no reported decisions. Parasitic copying is better protected by unfair competition provisions. UCPD could be used as part of more complex infringing manoeuvres aimed at copying the competitors' initiatives in a parasitic fashion and advertising them, but is not designed to address parasitic copying.
Latvia	1. Measures to cease and prohibit unlawful IP actions. 2. Recovery of (i) monetary damages; and (ii) moral damages, where there has been irreparable harm to the reputation of the trade mark or the products the	Yes, although monetary damages are not cumulative, e.g. a plaintiff would not recover unjust enrichment damages, and lost profit damages, and damages analogous to if a	Yes, although it is still relatively new.	② The Consumer Rights Protection Centre and the Competition Council monitor the general observation of unfair commercial practices law, advertising law and competition	Not aware of any decisions relating to parasitic copying which are regarded as civil disputes.

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	subject of copying. 3. Removal of goods or means of producing them from trading channels, e.g. by destruction. 4. Publication of judgment in newspapers or magazines.	licence had been paid by the infringer. However, a plaintiff could make a claim for one of these types of monetary damages, together with a claim for moral damages and litigation expenses.		law, as well as other state institutions in various sectors and takes action in administrative proceedings. Although enforcement of the UCPD is only carried out by public authorities, private rights holders also refer to the UCPD provisions in civil cases as means of interpreting the meaning of certain terms like "misleading commercial practices".	
Lithuania	1. Termination of illegal acts. 2. Recovery of damages. 3. Obligation to make public statements regarding identity of undertaking or its goods. 4. Seizure or destruction of their goods or packaging or other means, directly related to unfair competition, unless the infringements can be eliminated otherwise.	Yes.	Yes.	③ The enforcing public bodies are the State Consumer Rights Protection Authority and the Competition Council of the Republic of Lithuania. Consumers and consumer associations have the right to apply to the State Consumer Rights Protection Authority concerning infringements.	No. The role of public authorities is limited because they enforce the UCPD only after infringements are reported by consumers or businesses and seldom act <i>ex officio</i> . There are no reported cases.

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Luxembourg	1. Permanent injunction can be granted by the Commercial Court. Breach is a criminal offence. 2. Damages granted by the District Court, based on tort law.	Yes.	No, but the chances were quite good before anyway. Implementation of the UCPD and the ED created a new unfair commercial practices law (which protects consumers) but did not amend the existing unfair competition law (which protects competitors).	③ <u>Enforcement by public bodies:</u> consumer protection organisations, the Minister responsible for consumer protection, the regulatory bodies for the financial and insurance sectors. <u>Enforcement by private rights holders:</u> also possible.	There are no reports of the UCPD having been used against parasitic copies. Nevertheless it could be an effective means.
Malta	1. Issue of a judicial protest calling upon other side to cease and desist from actions and to come forward for the liquidation of damages, which serves to place the other side in bad faith with respect to its actions. 2. Request to the Civil Courts for issue of a warrant of prohibitory injunction. If issued, must be followed by filing of lawsuit within 20 days of issue. 3. Filing of one or more lawsuits in Civil Courts based on IP infringements, including unfair competition.	Yes.	<u>UCPD:</u> it may amplify or strengthen the rights holder's position in trying to convince the Court that parasitic copying should be stopped, but effectiveness is limited. <u>ED:</u> yes. List of improvements from the ED are set out in the respondent's submission.	③ The Consumers Affairs Act (CAA) which implements the UCPD can be enforced by the public authorities by way of criminal and/or administrative action and by consumers against traders based on the consumer rights provided for in the CAA. The CAA cannot however be enforced against other traders. <u>Public enforcement:</u> by the Director General (Consumer Affairs) - Office for Consumer Affairs, Malta Competition and Consumer Affairs Authority through:	Yes, it is an effective deterrent, particularly as administrative fines and criminal penalties can be levied. The respondent is not aware of any cases.

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				(a) criminal proceedings; (b) administrative proceedings following investigations; (c) issuing of compliance orders; (d) entry of inspection; (e) provision of information; (f) Imposition of administrative fines. <u>Enforcement by consumers:</u> by bringing a claim against traders before the Consumer Claims Tribunal.	
The Netherlands	1. Cease and desist order/injunction, including ancillary claims regarding (i) full details of suppliers; (ii) recall of all parasitic copies sold to customers who are not end-users; (iii) payment of a penalty for each day or part of day in which the defendant remains in breach of the order. 2. Damages. 3. Declaratory judgment that the defendant's actions are unlawful. 4. Rectification by the parasitic copier, including by publication of content on its website or by sending a letter to its customers.	Yes. The only exception relates to damages: a plaintiff cannot claim damages and surrender of profits. The plaintiff will have to choose one of those remedies (but is free to choose the option which is most attractive).	No. Unfair commercial practices between businesses and self-employed people are not included in the UCPD. They should be based on an action of tort, error or deceit.	③ <u>Enforcement under public law:</u> by Consumer Authority and the Netherlands Authority for the Financial Markets which can impose several administrative sanctions such as an administrative penalty, an order subject to a penalty and the publication of an individual decision. <u>Enforcement under private law:</u> by the Consumer Authority, individual consumers as well as by interest groups.	No. Individual consumers are not able to enforce their rights directly through the Consumer Authority, although they can submit a complaint to the Consumer Authority for it to take action. However, it is not required to take action except where the collective interests of consumers are being breached and if the system of private enforcement does not function effectively. Same applies to the Authority for the Financial Markets except that it only exercises its authority if the unfair commercial practices are related to a financial service or activity.

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Poland	<ol style="list-style-type: none"> 1. Relinquishment of prohibited practices. 2. Removal of effects of prohibited practices. 3. Making repeated statements of an appropriate content and form. 4. Repair of damage. 5. Handing over unjustified benefits up to value of damage. 6. Award of adequate amount of money up to value of damage to determined social goal connected with support for Polish culture or related to protection of Poland's national heritage where the act of unfair competition was at fault. 7. Order destruction or inclusion in indemnity of infringing products, packaging, advertising materials and other items connected with the act of unfair competition. 	Yes.	No. No change. UCPD has been implemented in Polish law but it does not include provisions for bringing claims for parasitic copying. Businesses' rights are indirectly protected because acts of unfair competition may also infringe consumers' rights.	③ Enforcement is by; 1. Consumers whose interests have been endangered or infringed by unfair commercial practices (other private parties, such as traders whose products were copied, cannot take action under Polish UCP law); 2. Ombudsman (independent central office which protects the freedoms and human rights guaranteed by Polish law); 3. Insurance ombudsman; 4. National or regional organisations whose statutory aim is the protection of consumers' interests; 5. Local (municipal or district) consumer ombudsman.	Enforcement of the Unfair Commercial Practices Act (UCPA), which implements the UCPD, by public authorities is not an effective way to prevent the sale of parasitic copies because the UCPA only applies to the protection of consumers (not traders) and the UCPA does not include express provisions allowing for bringing claims for parasitic copying.
Portugal	Compensation award, including an element for the plaintiff's costs - the factors that the court should take into account are set out in Art 338 of the Industrial Property Code.	N/A	Yes, by ED, as it is enacted into Portuguese law - see respondent's answer for list. No, by UCPD, since the public authorities have not so far applied Portuguese UCP law to cases of parasitic copying.	③ The public authority which orders protective measures for temporary cessation of unfair commercial practices or to determine the prior prohibition of an imminent unfair commercial practice is the Authority for the Food and Economic Safety	The Portuguese UCP law is mostly used for advertising cases. The public authorities (including ASAE) deal with IP violations (including parasitic copying) using the Portuguese IP code (as amended by the ED). The respondent presumes that this is because of a lack of knowledge regarding the Portuguese unfair

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				(ASAE) or the regulator of the relevant economic sector. Where the unfair commercial practice relates to advertising, the competent administrative authority is the General Direction of the Consumer (GDC) which may request of ASAE for effective implementation of its action. ASAE is responsible for monitoring compliance and investigation of the UCPD as it is enacted into Portuguese law.	commercial practices law and believes that some public awareness campaigns would help in alerting the Portuguese authorities to this law.
Romania	1. Damages, including discretionary damages. 2. Injunction. 3. Publication of court's decision in newspaper.	Yes. The plaintiff usually claims for all three remedies. Romanian courts usually grant all three remedies if the plaintiff successfully proves its case.	No. The UCPD (as implemented into Romanian law) only regulates business to consumer relationships. Laws implementing the ED only apply to the infringement of IPR.	③ <u>Enforcement by consumers:</u> only consumers can seek damages but as they face the same burden of proof as in an unfair competition claim, few cases are brought as consumers lack the resources to bring a claim unless the infringing product is clearly confusingly similar to the original product. However, in such cases, criminal proceedings may be brought.	No. The National Agency for Consumer Protection is likely to take action against counterfeit goods rather than parasitic copying. Even if it did take action, it would need information from the trader in the original products regarding the date on which they were originally placed on the market in Romania. There are no reported cases.

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				Enforcement by public authorities: businesses can notify the National Agency for Consumer Protection (which is the public authority responsible for enforcing cases under the UCPD) but it will only take action where there is proof of a significant risk to consumers.	
Slovak Republic	<ol style="list-style-type: none"> 1. Prohibition against further action. 2. Removal of consequences of parasitic copying (a civil remedy being, in effect, a means of correcting the altered state of the market caused by the unfair behaviour, for instance removal of the products from the market, withdrawal of a statement, or provision of an explanation or clarification). 3. Compensation - damages. 4. Surrendering of unjust enrichment. 5. Appropriate compensation for parasitic copying (by apology or monetary compensation). 	Yes.	Yes.	<p>❸</p> <p><u>Enforcement by consumers:</u> by filing a petition to begin court proceedings or administrative proceedings before public authorities. Reparation/compensation can only be awarded by a court in court proceedings begun by a consumer.</p> <p><u>Enforcement by public authorities:</u> by beginning proceedings <i>ex offio</i> or on the basis of a customer's petition, usually punishable by a fine. Public authority can also ban the introduction of an unsafe product or stop an unfair commercial practice. Imposing a fine does not affect whether reparation/compensation is</p>	Although enforcement by public authorities is one way of preventing parasitic copying in the Slovak Republic, it is not the most frequently-used or effective option. Enforcement by the rights holder is the best way of dealing with parasitic copies. Slovak public authorities concentrate on preventing the sale of dangerous products and unfair commercial practices that directly harm consumers. Look-alikes are left to rights holders. The respondent is unaware of any action having been taken by public authorities against look-alikes.

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				<p>awarded to the consumer. Relevant public authorities are Slovak Commercial Inspection and the State Veterinary and Food Administration of the Slovak Republic.</p> <p><u>Enforcement by rights holders:</u> only by unfair competition provisions contained in the Commercial Code, rather than Slovak law which enacted the UCPD.</p>	
Slovenia	<p>Market Inspectorate can issue:</p> <ol style="list-style-type: none"> 1. a decree prohibiting a person from continuing with an unfair commercial practice; 2. fine of up to €40,000. <p>In relation to a breach of Article 13 of Protection of Competition Act:</p> <ol style="list-style-type: none"> 3. cessation of sale of products or any other actions which represent a breach; 4. Fine of legal person of up to €10,216 or fine of natural person of up to €4,172. <p>Action can be brought privately and remedies include (a) cessation of unfair competition; (b) withdrawal of all products; (c) restitution of previous conditions; and (d) restitutionary awards.</p>	<p>Yes. However, remedy 2 may only be imposed under either the Consumer Protection Act ("CPA") or the Consumer Protection against Unfair Commercial Practices Act ("CPUCPA"), not both.</p> <p>Yes for remedies 3 and 4.</p> <p>Yes for legal action brought by any company/natural person affected by activities amounting to unfair competition under general rules of civil law.</p>	<p>Yes, by setting and crystallizing the standards of what constitutes unfair commercial practice and which actions or omissions represent a breach of that standard. Possible infringements are processed more quickly by the courts, even though enactment of the UCPD did not introduce any new legal actions.</p>	<p>③</p> <p><u>Enforcement by public authorities:</u> by Market Inspectorate.</p> <p><u>Enforcement by private organisations:</u></p> <ol style="list-style-type: none"> (a) Consumer protection organisations: against any company in breach of Slovenian unfair commercial practices law provided that the organisation existed and was active for a year before the breach occurred; (b) Chamber of commerce or business association of which company in breach is a member. 	<p>Market Inspectorate has proven quite effective in detecting and preventing unfair commercial practices, including parasitic copying. Three reported decisions are included in the respondent's submission.</p>

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Spain	<ol style="list-style-type: none"> 1. Declaration that defendant's parasitic copying is unfair and illegal. 2. Order to cease the unfair imitation; to prohibit it (if that has not already happened) and to prohibit its repetition in future. 3. Order the removal of all effects caused by the imitation - this remedy provided under Article 32.1.3 of the UCA, seeks to remove the effects caused by the unfair behaviour and eliminate any distortion caused in the market as a result of the unfair behaviour. It is an independent remedy, different from an injunction. According to the legal commentators (case law is scarce) it would require that the unfair behaviour of the defendant causes effects in the market and that those effects persist after the injunction. The "restitution" may produce effects over the material means through which the unfair behaviour was carried out, for instance, advertising materials, packaging, labels, by means of ordering their amendment, return or withdrawal from the market. 4. Order to rectify the misleading, inaccurate or false information. 5. Compensation for damages caused, provided that the infringer acted with negligence or with knowledge of the 	Yes.	<p>Yes, but not substantially. The amendments made to Spanish unfair competition law pursuant to UCPD have not yet been the subject of case law.</p> <p>Current commentary concludes that the new provision would only apply when there is (1) a similarity in the goods or services or their trade dresses; and (2) such similarity causes a direct risk of confusion in the consumers in relation to the origin of the good or service.</p> <p>The wording of this provision requires the willingness to cause confusion by means of an imitation of the physical features or trade dress of a product and therefore it would exclude other cases such as those where there is a risk of association, or when confusion was not caused on purpose.</p> <p>Various new remedies were also implemented pursuant to the UCPD and the ED.</p>	<p>③</p> <ol style="list-style-type: none"> 1. Any individual or legal person operating in the market whose economic interests are directly harmed or threatened by the unfair practice (for all claims with the exception of unfair enrichment which can only be enforced by the holder of the infringed legal position). 2. Associations, professional corporations or representatives of economic interests of a group of people can take action for: declaratory judgment, cessation/prohibition, removal of effects or rectification of information) when the interests of their members are affected. 3. The Instituto Nacional de Consumo (National Institute of Consumer Affairs) as well as other consumer protection organisations. 4. The Public Prosecutor's office may act to stop the unfair behaviour in defence of consumers and users' general, collective or common interests. 	<p>No. There is no reported case law.</p> <p>The Public Prosecutor can not take action without being notified by the court of the commencement of proceedings, but the current communication mechanism provided by law is ineffective.</p> <p>The Public Prosecutor also tends to focus on its traditional role in criminal proceedings and has little experience in the enforcement of IPR. Consumer protection organisations are also likely not to prioritise parasitic copying.</p> <p>It is unlikely that the authorities would regard the interests of consumers being unduly harmed in standard parasitic copying cases and so they will not take action.</p>

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	<p>infringement.</p> <p>6. Compensation for the unfair enrichment obtained by the infringer, provided that the unfair practices amount to IP infringement.</p> <p>7. Order the total or partial publication of the decision at the defendant's costs under certain circumstances (i.e. when the court admitted any of the claims in 1 to 4 above and it so decides).</p> <p>8. Preliminary injunctions.</p> <p>9. Pre-trial inspection proceedings.</p>				
Sweden	<p>1. Prohibition on continuing with the marketing of the parasitic copy. Can be issued on a preliminary basis, and subject to a conditional financial penalty.</p> <p>2. A market disruption charge may be imposed if the contravention is intentional or negligent.</p> <p>3. Damages if a plaintiff can prove that it has suffered damages as a result of the intentional or negligent unlawful act.</p>	<p>Yes, for remedies 2 and 3.</p> <p>No, for remedy 1.</p>	<p>Yes. Implementation of the UCPD has increased protection against parasitic copies, as there will not be a stricter assessment of whether an alleged product is a parasitic copy since the question considered is whether the commercial practices in all circumstances are considered unfair. Promoting a parasitic copy will hence be an unfair commercial practice, particularly in the more blatant cases of parasitic copying since there is a deliberate intention to mislead.</p>	<p>③</p> <p>Proceedings in respect of a prohibition or order may be started by (i) the Consumer Ombudsman (public authority), (ii) a trader affected by the marketing in question or (iii) a group of consumers, traders or employees. Proceedings in respect of a market disruption charge are instituted by the Consumer Ombudsman. If the Consumer Ombudsman decides in a particular case not to commence proceedings, an individual trader affected by the marketing in question or a group of traders can do so.</p>	<p>Yes, although to date the Consumer Ombudsman has not done so.</p>

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UK	<ol style="list-style-type: none"> 1. Injunctions 2. Delivery up/destruction of goods. 3. Damages. 4. Account of profits. 	Yes, but probably not damages and account of profits.	<p>No. The UCPD was enforced as the Consumer Protection Regulations ("CPR") but as no private enforcement is possible and little public enforcement takes place, the chances of bringing a successful claim for plaintiffs are no different than before the UCPD was implemented.</p> <p>There have been few changes to the remedies available to plaintiffs by the ED, although the courts have not examined the point.</p>	<p>②</p> <p>Enforcement is made by either local Trading Standards Officers, the Department of Enterprise, Trade and Investment in Northern Ireland and the Office of Fair Trading ("OFT").</p>	<p>No. Trading Standards tend to focus on other consumer protection issues which are regard as taking priority (e.g. product safety issues) as resources are limited.</p> <p>The OFT has undertaken fewer than 40 instances of enforcement under the UCPD, none of which related to parasitic copying.</p> <p>A consultation has been launched by the public authorities responsible for law reform (the Law Commission and the Scottish Law Commission) to examine the remedies available to consumers for misleading and aggressive commercial practices which breach the CPRs. They intend to publish their final recommendations in early 2012. The UK Intellectual Property Office has also commissioned a study which is due to report in summer 2011, after the date of this report.</p>