**EFFORTS TO APPROACH NEW CUSTOMERS OR "SCRAMBLE" CUSTOMERS?**

The sparseness of customers during the epidemic is a common situation that many industries are facing. Finding new customers at this time becomes the top priority of the enterprise sales team. It is also a story that easily goes from a conventional sales effort to a lawsuit due to unfair competition.

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Facing the complicated developments of the epidemic situation, the production and business activities of enterprises are seemed increasingly hopeless, the pressure to maintain the survival of enterprises has increased to an alarming level. Shopping demand is low, even stopping for many types of items. During the epidemic, the pressure on the sales team to get customers for the enterprise and ensure their KPIs[[1]](#footnote-1) as before is difficult that not all employees and enterprises can properly overcome.

Many illegal acts have been recorded under the following cases: A and B are two companies operating in the field of retailing products and acting as an agent for company C. Company B receives many calls from some customers informing about the status of customers receiving calls and messages from employees of company A asking about their health, then offering to buy goods and saying bad things about business B like "you must be careful that company A has a lot of bad disputes", "they often violate contracts with customers", "that party's staff gives wrong advice to customers", "that party has a hard time", " when buying the product from me, you will receive attractive discounts and gifts, I will take good care of you" even an employee of company A sent a photo of an individual's comment on social networks for customers to see. Some customers felt worried and contacted company B to ask for clarification of the truth and threatened to cancel the contract and ask for the deposit to be returned if the problem was not resolved satisfactorily. Company B was surprised by the fabricated information about its company and employees.

**Responsibilities of individuals**

Acquiring customers is a desire and effort by different methods of sales staff and enterprises. However, when finding customers' activities goes beyond the legal framework, it is necessary to consider legal responsibility. Legally, the behavior of the above individual can be considered under two possibilities (i) may simply be the employee's behavior to bring customers back to his company, accordingly, achieve the customer target set by the company, and (ii) the behavior may have the impulse of the company to disrupt another company's business and entice customers.

Although salespersons have the right to approach customers to offer to buy goods for their company, if salespersons share fabricated information about another business lead to effects the reputation and image of individuals, organizations, such behavior may be considered a violation of relevant laws such as administrative law, cyber security or even criminal law depends on the characteristics, nature, and extent of the violation. According to Law on Cybersecurity 2018, acts of sharing invented or untruthful information infringing the honor, reputation, dignity, or causing loss and damage to the lawful rights and interests of other agencies, organizations, or individuals are identified as information with embarrassment or slanderous[[2]](#footnote-2). According to Article 101.1.a of the Government's Decree 15/2020/ND-CP dated February 3, 2020, stipulating penalties for administrative violations in the fields of the post, telecommunications, radio frequencies, and information technology and electronic transactions, individuals providing or sharing fake, untruthful information, distorting, slandering, insulting the reputation of agencies or organizations shall be fined from ten million dong to twenty million dong, and at the same time forcibly removing false, confusing and law-breaking information. If the behavior shows signs of crime, the individual may be examined for penal liability for slander with a non-custodial reform penalty of up to two years or a prison term from three months to one year. At the same time, the subject may be fined from ten million dong to fifty million dong, a ban from holding certain posts, practicing certain professions, or doing certain jobs from one to five years.

**Responsibilities of enterprises**

In case the employee's behavior has the influence, direction, or tolerance or cover of an enterprise in order to obstruct business activities or attract customers of other enterprises, the liability of the legal entity is enterprise may be considered in the aspect of competition law. Refer to the Law on Competition 2018, unfair competition practices are defined as practices by an enterprise that is contrary to the principles of goodwill, honesty, commercial practice, and other standards in business and which cause or may cause loss and damage to the legitimate rights and interests of other enterprises. Some common unfair competition practices are also listed in prohibited cases[[3]](#footnote-3) such as (i) Providing untruthful information about other enterprises by the way of directly or indirectly that adversely affect its reputation, financial condition, or enterprise operations; (ii) Disrupting the business activities of another enterprise by way of directly or indirectly hindering or interrupting the lawful business activities of such other enterprise, and (iii) Illegally inducing customers by the method of providing false or misleading information to customers about an enterprise or goods, services, promotion or transaction conditions for goods or services provided by such enterprise to attract the customers of another enterprise.

For each practice in breach of the law on competition, enterprises in breach must be subject to one of the main forms of penalty[[4]](#footnote-4) as a warning or a fine. Depending on the nature and seriousness of the competition law breach, one or more of the additional forms of penalty may also be applied such as (i) Withdrawal of enterprise registration certificate or equivalent document; deprivation of the right to use a license or practicing certificate, (ii) Confiscation of exhibits and facilities used to commit the breach of the law on competition, (iii) Confiscation of proceeds from conducting the breach. In addition to the forms of penalty as mentioned above, one or more of the measures for remedying consequences[[5]](#footnote-5) may also be applied as public correction or other measures are necessary to remedy the effects of the practice in breach. The maximum fine for the organization violating regulations on unfair competition is two billion dong.

In sum, individuals and enterprises have the freedom to look for markets, customers and sign contracts[[6]](#footnote-6) as well as the right to compete with each other, but such activities need to be carried out on the principles of honesty, fairness, and healthiness, without infringing upon the interests of other enterprises and consumers. It must be understood that individuals and legal entities must not abuse their civil rights to cause damage to others, violate their obligations or perform other illegal purposes[[7]](#footnote-7).

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1. KPIs is a performance indicator, reflecting the level of achievement of the goals set by the Company, department, or individual. [↑](#footnote-ref-1)
2. Article 16.3 of the Law on Cybersecurity 2018. [↑](#footnote-ref-2)
3. Article 45 of the Law on Competition 2018. [↑](#footnote-ref-3)
4. Articles 3 and 4 of Decree No. 75/2019/ND-CP dated September 26, 2019 on sanctioning of administrative violations in the field of competition. [↑](#footnote-ref-4)
5. Article 3.3 of Decree No. 75/2019/ND-CP dated September 26, 2019 on sanctioning of administrative violations in the field of competition. [↑](#footnote-ref-5)
6. Article 7.4 of the Law on Enterprises 2020. [↑](#footnote-ref-6)
7. Article 10 of the Civil Code 2015. [↑](#footnote-ref-7)