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Can obtaining a price for a generic medicament be considered an act of unfair competition?

Miquel Montaña (Clifford Chance) · Tuesday, November 23rd, 2010

Under Spanish law, when the first generic version of a medicament of reference (i.e. original medicament) is authorized, the setting of the price of the generic triggers the inclusion of the medicament of reference in the so-called “price reference system”, even if the generic is not launched onto the market until the patent protecting the medicament of reference expires. This has prompted the debate as to whether applying and obtaining a price may be objectionable.

On 16 November 2010, Commercial Court Number 5 of Barcelona handed down a judgment concluding that obtaining a price in these circumstances is an act of unfair competition since, even if the generic is not launched, the act of merely obtaining a price compromises the competitive position of the owner of the medicament of reference.

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