

The Austrian publishing company Construct Data Verlag GmbH, which operates internationally, is sending out advertising communications virtually worldwide for entry in an online fair exhibitors' directory bearing the name "Fair Guide". Because the timing of this communication is close to that of the respective fair date, and due also to the presentation, recipients often gain the false impression that, even when signed and submitted, this is a free entry and/or entry / update for the official exhibitors' directory of the respective fair organization, although completing the entry is in fact subject to a charge, and entry has nothing directly to do with the fair mentioned or its organizer.

In our view, such misleading advertising communications must be viewed as inadmissible in particular on the basis of the strict judicial precedent of the Supreme Court. Construct Data apparently targets these offers primarily abroad, and there too always seeks to collect payment whenever a form is signed in error. Due to the large number of complaints and thus prejudice to Austrian competitors, as well as the reputation of the entire Austrian business community, and damage to Austrian companies with foreign establishments, the Schutzverband (Austrian Association against Unfair Competition) has instituted proceedings for an injunction against these communications - which we consider to be misleading - and the profits therefrom, i.e. a prohibition on the collection of payments. This intervention in a matter of unfair competition is initially restricted to the European Union and Switzerland, because here the legal position is largely identical, in particular due to the Directive relating to misleading advertising. If the outcome of these proceedings is successful, they will be extended to other countries.

The action has been dismissed in the proceedings of first instance on the grounds that the Schutzverband, due to the fact that communications were not sent to businesses in Austria, does not have a right of action, although, as stated above, we do indeed perceive prejudice as regards our members and shall file an appeal. In no manner, however, was the content of the communications assessed or approved; the decision was purely one relating to formal requirements.

In any event, intervention by the Schutzverband cannot replace challenging of claims under civil law by those businesses which have signed up to the directory. With regard to those companies which have been misled, we would therefore recommend that legal advice be sought; in our view error can be asserted. In our experience it is the case that, following contestation of a claim, apparently in no case has legal action been taken by Construct Data.

We recommend that affected companies withdraw from the contract due to error. For this purpose, we are sending you a specimen letter, based specifically on Austrian civil law, according to which, based on agreement that Austria shall be the place of performance, this can be applied.

In addition, we also recommend that affected companies file a complaint with the Federal Trade Commission (FTC), if they have not already done so:

Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580
Tel. 1-877-382 4537
Refer to reference number: 4183864

(See attached: Cancellation Letter)

Sincerely,
Bruno Freytag
Trade Commissioner

Austrian Trade Commission
120 West 45th Street, 9th Floor
New York, NY 10036, USA
Tel +1 (212) 421-5250
Fax +1 (212) 421-5251
E-Mail: newyork@austriantrade.org
Website: www.austriantrade.org

Construct Data Verlag AG
Management

By fax: +43-1/90 208-40

Dear Sir/Madam

Re: Your invoice/reminder dated

With reference to your letter dated, in which you request payment of the sum of EUR, we would respond as follows.

On, in error we signed your communication regarding a "Fair Guide", since you had given rise to the inaccurate impression that this entry was free of charge / an update for the official exhibitors' index of the said trade fair. Since the error was caused by you and was material in leading to conclusion of the contract, we contest the contract - in so far as a contract indeed even came into being, which we would also dispute - on the basis of error, in particular pursuant to Austrian law (Section 871 ABGB).

For the sake of good order, we would also point out that the clause according to which the contract is concluded for three years / automatically extended is also invalid in particular pursuant to Austrian law (Section 864a ABGB). This is most certainly an unexpected clause which would not be anticipated according to the external appearance of the document.

Finally, we have been informed that, besides numerous other actions and court orders against you, the Austrian *Schutzverband gegen unlauteren Wettbewerb* is conducting a comprehensive set of proceedings against your company with the aim of obtaining an injunction preventing you from despatching these misleading communications and deriving the benefits therefrom, i.e. a prohibition on collection of the amounts concerned.

We do not therefore see any reason to settle the amount requested by you.

Yours faithfully