

LESIN, DEJEHET & DE RIEMAECKER

Avocats associés

Paul BLESIN
Denis DEJEHET
Olivier DE RIEMAECKER
Michel du BUS de WARNAFFE
Benoît MARCQ
Aurélié DEPONDT
Attorneys

1410 - WATERLOO
avenue Claire, 2

Construct Data Versalg AG

Ortsstrasse, 54
2331 VÖSENDORF
- Austria -

Waterloo, August 13, 2004

Dear Sir or Madam,

Your ref. :

Our ref. : 11993/2 - FEBELUX / CONSTRUCT DATA

I am writing you in my capacity as legal adviser to FEBELUX (Federation of Trade Fairs and Exhibitions of Belgium and the Grand Duchy of Luxembourg).

My client is an interprofessional association that represents the interests of organisers of Belgian and Luxembourg trade fairs and exhibitions.

The association's objects expressly authorise it to represent its members for purposes of resolving all problems of a legal and economic nature.

On several occasions, your company has been directly referred to by certain trade fair and exhibition organisers who complained about your conduct.

This time it is generally on behalf of all members of the Federation of Trade Fairs and Exhibitions of Belgium and the Grand Duchy of Luxembourg that your company is being called to account for its practices.

It has emerged from various dossiers that were sent to me that your business practices have consisted in spamming, cold faxing, etc. exhibitors about becoming listed in your *Fair Guide* directory by explicitly using names of

trade fairs and exhibitions and business names of the organisers of said trade fairs and exhibitions without any permission whatsoever from the latter.

This illicit use has created confusion on the part of exhibitors who might reasonably assume that your company had ostensibly been authorised to approach them by the organisers your company mentions.

./...

Your company has intended to benefit unduly from the distinctive character or established reputation of fairs and organisers that your company mentioned without any prior authorisation whatsoever to do so.

In addition, numerous exhibitors complained about your sales methods, which were contrary to honest trade practices.

With the result that through such practices, your company has tarnished the image of my client's members and been prejudicial to the professional interests of herein aforementioned members.

I must draw your attention to the clauses of the Paris Convention for the Protection of Industrial Property of March 20, 1883, revised in Stockholm on July 14, 1967:

- Article 1, paragraph 2: "*The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition*". [We have added the underscoring].
- Article 2, paragraph 1: "*Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention.*"
- Article 8 : "*A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark*". [We have added the underscoring]

The industrial property right duly recognised in the Convention, applicable both as Belgian law and as Austrian law, gives the holder of the trade name the exclusive right to oppose any use of said name by third parties when this use is apt to cause loss or damage, even non-material damage.

In addition, by virtue of Article 2, paragraph 1, the industrial protection also extends to other forms of protection provided for by laws of the countries of the Union.

./...

The Belgian Law of July 14 1991 on Trade Practices happens to apply in this case, not only because of the extended protection of industrial property recognised by the Paris Convention, but what is more, by virtue of international private law, as this law known as "police" law applies to all events that fall under its field of territorial application, namely all dishonest trade practices that occur on Belgian territory.

Article 93 of the Law of July 14 1991 forbids any action contrary to honest commercial practices by which a vendor infringes on the professional interests of one or several other vendors.

The act of using trade names as well as trademarks, without the permission of their holders, in order to create confusion on the part of your customers and give your company undue legitimacy in its business dealings while undermining the image of holders through your questionable business practices vis-à-vis your customers, is most certainly an act contrary to honest commercial practices as well as the illicit use of the trade name of others.

The particular case of your forms that mention in small print next to the name of the exhibition: "*The exhibition mentioned hereinbelow may be a trade name of the organiser or other firm. This name is used solely for explanatory purposes and in the interest of the owner of this trade name, without any intention to damage its reputation or infringe its copyright.*" does nothing at all to dispel the preceding argument.

Your legal department will easily confirm to you that it is not up to your company to determine unilaterally what the interests are or what constitutes harm to the reputation of the owner of a trademark or name.

Much more, such a note shows the uneasiness your company senses in using trademarks, names or trade names of third party companies illicitly and without prior authorisation to do so.

There are any number of means of action, including civil and penal proceedings, that can be used to make your company bring a halt to such practices. Naturally there will be assorted damages if you do not stop such schemes of your own accord.

./...

In addition, my client does not rule out denouncing your practices to the Belgian administrative authorities (Federal Ministry of the Economy, Justice and/or Foreign Affairs in order to invite them to refer the case to the competent Austrian administrative authorities.

By the same token, in the name of my client acting in the interests of trade fairs and exhibitions in Belgium and the Grand Duchy of Luxembourg, I hereby give you notice, one last time, to stop your practices and no longer use the trade name, designation and trademarks of the organisers of trade fairs and exhibitions in Belgium and the Grand Duchy of Luxembourg without their prior written authorisation.

All this without relinquishing any claims for damages relating to past conduct.

This letter is addressed to you under usual reserves and without any acknowledgement prejudicial to our interests. Furthermore, it shall be brought to the attention of my client's members.

Awaiting to receive your confirmation of the immediate halt to practices denounced herein, I remain,

O. DE RIEMAECKER