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## Sample letter Construct Data Verlag AG

Vienna, Dec 15, 2005

It has also been brought to our attention that an Austrian publishing company – which by the way is a wholly owned subsidiary of a Swiss holding company – is posting mailshots almost all over the world to publicise the possibility of registration in a trade fair exhibitor directory called "Fair Guide". Due to the way the mailshot is presented and the proximity in time to certain trade fairs, the recipients often have the false impression that the mailshot refers to a free entry and/or entry or update for the official exhibitor directory of the trade fair organisation in question, although registration is in fact fee-based and is in no way connected to the listed trade fair or the organiser of the event.

In our opinion, mailshots with misleading appearance are prohibited by Austrian law based on the rulings of the Austrian Supreme Court if such mailshots are sent to companies in Austria. This does not apply in the current case, however, as Construct Data only operates outside Austria. This means that the activities of this publisher are subject to the laws of the country whose market is affected by its actions – in other words where the company in question received the mailshot.

Due to the high number of complaints, however, the "Schutzverband gegen unlauteren Wettbewerb" in Austria (the federation to prevent unfair competition) has now filed an action to desist against the publisher to stop him from sending out these misleading mailshots and to prevent him from gaining unlawful profit (in other words, preventing the publisher from collection of receivables in this connection). This intervention due to unfair competition is initially limited to the European Union and Switzerland, as we believe that the legal regulations are sufficiently similar in the countries in question.

If this test case has a positive outcome, it can be extended to other countries in the event that the mailshots continue to be sent and are inadmissible according to the laws of the country in question. The intervention of the Austrian federation cannot, however, replace the filing of civil proceedings by the companies who have signed up for registration.

As your company has been affected by the activities of the publisher, we urgently advise you to formally cancel the agreement due to the existence of error. We enclose a specimen letter based on Austrian civil law, which should be applicable – particularly in view of the stipulation in the agreement that the place of performance is in Austria.

Last but not least, our experience to date shows that Construct Data has not filed a single action to date following a challenge to their claim for payment of the fee. Should you therefore receive further letters, demands or threats of legal action from collection agencies, you should also refer to the cancellation of the agreement due to the existence of error. If an action is filed against you, however, please contact your foreign trade office once again without delay.

Enclosure: cancellation letter

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