

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 full completion and submission of the entry is in fact subject to a charge and the 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. We have therefore instituted proceedings, although Construct Data is clearly deliberately only sending these offers outside Austria. This third-party action for unfair competition is initially restricted to the European Union and Switzerland, since 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 Supreme Court has now decided in an initial decision on principle that, due to the possibility of the conduct in question causing prejudice to the economic location of Austria and those competitors operating in Austria, the *Schutzverband* has a right of action. In the proceedings to be conducted further therefore, a decision will now be made on whether the communications in question may be considered misleading.

We are also aware that, in the event of the entry being signed and submitted, the payments claimed are clearly in some instances being chased very aggressively by a collection agency named Premium Recovery AG with registered office in Switzerland. As an initial step therefore, an objection on the grounds of error should be addressed to Construct Data.

In the event that Premium Recovery then continues to send reminders for payment, we would recommend sending the second specimen letter enclosed. In this regard it is important to note that a collection agency can do no more than send reminders for payment, but may not itself actually institute legal proceedings. In our experience, following contestation of a claim, it would appear that to date in no instance has any legal action been taken to obtain payment.

Enclosed: Cancellation letter to Construct Data Verlag GmbH and letter to Premium Recovery AG