

## Case law

### Case Details

**National ID:** I ZR 306/99

**Member State:** Germany

**Common Name:** link

**Decision type:** Other

**Decision date:** 11/04/2002

**Court:** BGH (Supreme court)

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

Distance Selling Directive, [Article 4, 1.](#) Distance Selling Directive, [Article 4, 2.](#) Distance Selling Directive, [Article 6, 1.](#)

### Headnote

In the context of a notice of the right of withdrawal of a subscriber of periodicals according to § 505 (1), 1st sentence, No.2, 2nd and 3rd sentence in conjunction with §§ 491 (2) and (3), 355 BGB (Bürgerliches Gesetzbuch – German Civil Code), the giving of a post office box address is sufficient.

### Facts

The applicant is the consumer advice centre B. The respondent is a distributor of periodicals. The latter's order form for the conclusion of subscription contracts for periodicals contains a notice of the right of withdrawal requiring an additional signature by the subscriber, in which the respondent is named as addressee for withdrawal. The form previously used merely gave a P.O. Box address, not a full postal address with street and house number. According to the view of the applicant the respondent was thereby in breach of both the letter as well as the purpose of § 7 (2), 2nd sentence VerbrKrG (Verbraucherkreditgesetz – Consumer Credit Act) as it then applied (now: § 355 (2), 1st sentence BGB). The following submissions were made: address within the meaning of this provision meant house address; a P.O. Box address did not represent an address capable of delivery in the procedural sense; there was no cause to suggest that the legislator intended the term "address" in § 7 (2), 2nd sentence VerbrKrG as it then applied (now: § 355 (2), 1st sentence BGB) to be defined any differently than in the civil procedure rules; without a house address the consumer could not determine who his contractual partner was; furthermore, the time limit for withdrawal provided by § 7 (1) VerbrKrG as it then applied (now § 495 BGB) was shortened.

It was also argued that the respondent exploited the subscriber's ignorance of the law about his right of withdrawal and thereby simultaneously breached § 1 UWG (Gesetz gegen den unlauteren Wettbewerb – Act Against Unfair Competition) as it then applied (now § 3 UWG). The applicant sought an injunction prohibiting the respondent from giving a P.O. Box address instead of its actual address. The Landgericht (district court) dismissed the claim. The applicant's Berufung (appeal on points of fact and law) was unsuccessful, as the appellate court regarded the notice of the right of withdrawal as sufficing the requirements of § 7 (2), 2nd sentence, as it then applied. The Revision (appeal on points of law) by the applicant was dismissed.

### Legal issue

The BGH (Bundesgerichtshof - Federal Supreme Court) followed the Berufung decision, that the notice of the right of withdrawal at issue sufficed the requirements of § 7 (2), 2nd sentence 2 VerbrKrG as it then applied (now: § 355 (2), 1st sentence BGB). Also the provisions which in the meantime had replaced this provision, namely § 361a (1), 3rd sentence BGB in the form of the Gesetz über Fernabsatzverträge und andere Fragen des Verbraucherrechts sowie zur Umstellung von Vorschriften auf Euro (Act on Distance Contracts and other Issues of Consumer Law as well as to Convert Provisions to Euros) of 27.6.2000, which applied during the period from 1.10.2000 until 31.12.2001, and § 355 (2), 1st sentence BGB which applied since 1.1.2002 in the form of the Gesetz zur Modernisierung des Schuldrechts (Act to Modernise the Law of Obligations) of 26.11.2001, which is henceforth material for the assessment of future injunctive claims, did not alter the substance of the provision. The view of the Berufung court that the giving of a P.O. Box address is sufficient for the notification to subscribers of newspapers and magazines of their rights of withdrawal – which is meanwhile regulated in § 505 (1) 1st sentence, no.2, 2nd and 3rd sentences in conjunction with §§ 491 (2) and (3), 355 BGB –, is, on the basis of the subsequently applicable legal provisions, perfectly sound.

The BGH states that this admittedly does not result from the – in this respect not unambiguous – wording of § 355 (2), 1st sentence BGB, but certainly from the aim and purpose of the statute. The rule intends that the consumer shall be informed as to the person to whom the withdrawal should be addressed, whereby the giving of a P.O. Box address for the addressee of withdrawal is sufficient. The giving of a P.O.Box address is unambiguous, comprehensible, and is also not designed to hinder the consumer from exercising his right of withdrawal. A duty of the business, to inform the consumer of his identity and address, is neither expressly provided for in § 7 (2), 2nd sentence VerbrKrG as it then applied nor does it result from § 355 (2), 1st sentence BGB.

A P.O. Box also represents a suitable facility for the addressee to receive declarations of withdrawal. Also the reference to the postal method is reasonable, as this is the usual form of delivery. In particular, it is not necessary for a timely withdrawal that the consumer personally insert his withdrawal in the house post box of the recipient, as according to § 355 (1), 2nd sentence, 2nd indent 2 BGB the timely sending of the withdrawal is enough for it to be effective. Accordingly, it is sufficient for the consumer to post his withdrawal on the final day of the time period before 24:00hrs in any post box, and therefore the mere giving of a P.O. Box address of the addressee does not shorten the time period for withdrawal provided for the consumer by law.

In the view of the BGH there is not a legislative gap either. A duty incumbent on the business, to inform of its identity and address, is prescribed only in respect of distance contracts, not however for other consumer contracts. The legislator has also expressly required the giving of an address capable of delivery in various other recently enacted legislative provisions, but not with the new version of § 355 BGB. The legislator expressly prescribed an address capable of delivery in those other provisions where this appeared necessary to enforce claims by way of legal action. This purpose was not however pursued with the requirement to give the name and address of the addressee for withdrawal within the notification of the right of withdrawal in § 355 (2), 1st sentence.

### Decision

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