

Case Details

Case Details

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| National ID | 6 U 200/01 |
| Member State | Germany |
| Common Name | link |
| Decision type | Other |
| Decision date | 27/03/2002 |
| Court | Oberlandesgericht (Appellate court, Karlsruhe) |
| Subject | |
| Plaintiff | |
| Defendant | |
| Keywords | |

Directive Articles

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

Headnote

1. If a business offers the conclusion of distance contracts via the internet, it does not fulfil its duty to inform of its identity and address according to § 2 (2) Nos. 1 and 2 FernAbsG (Fernabsatzgesetz – Distance Contracts Act) as it then applied by merely giving the consumer the possibility via a “contact” link to be access the required information.

Facts

The claimant organises lottery pools as a business. The respondent runs an internet portal. Therein it offers lottery tips to lottery pools for payment. A precondition is that the internet user registers with the respondent. Following registration, the customer can “complete” a lotto ticket online. All pages relating to the lotto acceptance are designed in such a way that via a frame to the left under the menu “Prices / Terms and Conditions” the user can access the sub-link “terms and conditions”. By clicking on “terms and conditions” the user is directed to the terms and conditions of the respondent in which it calls itself “W-AG2 (hereinafter W)”. All pages – even during the registration process – show the links “search – themes – services – freemail – help – contact” in the navigation menu in the side bar and in a bar at the bottom. By clicking on “contact” the user is led to a page where he can send a request to the respondent. In a frame on the right of the page under the title “Impressum” (similar to a letterhead but required only to contain the names of the persons responsible according to media law) the name of the respondent’s company, their address and the names of the members of the board of directors are given. The parties to the interlocutory injunction proceedings dispute whether the respondent thereby satisfies the rules of §§ 2 und 3 FernAbsG as it then applied. The respondent’s appeal was unsuccessful.

Legal issue

The Senate is of the view that the information as to the firm and its address is not given in a clear and comprehensible manner. Providing this information below the heading “Impressum” on a special page to which users were directed via the link “contact” in bars at the top and bottom of the page was not sufficient. The precise requirements for a business to sufficiently notify the consumer are not defined in the German provisions or in Art. 4 (1) and (2) Directive 97/7/EC. The aim and purpose of the statutory information requirement on identity and address is that the consumer is clearly and comprehensibly informed of whom he is doing business with. It is not sufficient

that the consumer is merely in the position whereby he can find out this information. Therefore, a minimum requirement is that the information is displayed in a prominent place on the online form, so that the consumer cannot avoid seeing it. The link "contact" is not sufficiently clear, as it would be concealed from a large number of users, that this was not merely a mailto-link but rather contained information as to the firm and address of the provider. Furthermore, the title "Impressum" can also cause confusion, as an "Impressum" normally only contains the names of the responsible persons according to media law. In addition, the information on essential features of the service is not displayed clearly and comprehensibly on the respondent's web page. Through the mere possibility to be informed of the essence of the business via clicking on "terms and conditions" it is not made sufficiently clear to customers, that the transaction with the respondent merely represents an instruction to procure another transaction, and does not e.g. encompass a bet in itself.

Furthermore the respondent has also breached its duty to give information on the customer's right of withdrawal according to § 2 (2) No. 8 FernAbsG as it then applied (§312c (1), 1st sentence No. 1 BGB in conjunction with Art. 240 EGBG and § 1 (1) No. 9 BGB-Info-V). A right of withdrawal is not excluded according to § 3 (2) No. 4 FernAbsG as it then applied (§312d (4) No. 4 BGB), because the contracts at issue are not contracts of betting or lottery services. The speculative or aleatoric element required by Art. 6 (3) Distance Selling Directive 97/7/EC is missing, as the agency business merely forwards lotto tickets. A withdrawal is therefore possible and information thereon is necessary.

Comment: cf. hereto also the judgment of the OLG (Oberlandesgericht – higher regional court) Munich of 11.9.2003, NJW-RR 2004, 913.

Decision

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