

## Case Details

### Case Details

National ID	29 U 2681/03
Member State	Germany
Common Name	link
Decision type	Other
Decision date	11/09/2003
Court	Oberlandesgericht (Appellate court, München)
Subject	
Plaintiff	
Defendant	
Keywords	

### Directive Articles

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

### Headnote

1. Information on provider identification, which can be accessed on the internet through a double link via “contact” and “impressum” (similar to letterhead, but normally only containing the names of the persons responsible according to media law) satisfies the requirements of the principle of transparency according to § 312c (1), 1st sentence BGB (Bürgerliches Gesetzbuch – German Civil Code) (=Art. 4 (1) lit. a Directive 97/7/EC).

### Facts

The applicant centre to combat unfair competition seeks injunctions against the respondent in relation to its internet presence according to the UKlaG (Injunctions Act) as well as competition law. Inter alia it submits that the respondent’s provider identification in relation to its internet presence is insufficient.

The LG (Landgericht – district court) entered judgment against the respondent on 5.3.2003 in the terms of the application, to cease the following: offering online ordering facilities for periodicals and books whereby details of its name, address (street address), authorised representatives, companies’ register in which the respondent is incorporated and the corresponding registration number are only available indirectly via the link “contact” and there via a further link “impressum”. Upon appeal by the respondent the judgment was amended in part and redrafted.

### Legal issue

The OLG (Oberlandesgericht – higher regional court) Munich is of the view that the respondent’s provider identification in relation to its internet presence suffices the requirements of transparency according to the consumer protection provisions § 6, 1st sentence TDG (Telemediengesetz – Telecommunications Services Act), § 19 (2), 1st sentence MDStV (Mediendienstestaatsvertrag - Federal convention on Media Services). According to these provisions, telecommunications and media services providers have to ensure their provider identification is easily recognisable, directly accessible and always available. They have to be displayed in a prominent place without the need for long searching and findable at any time. Because of the descriptions “contact” and “impressum” used in the present dispute the information is easily recognisable. In the absence of statutory requirements, the descriptions “contact” and “impressum” have in practice become recognisable as the means by which users are referred to

details on the identity of the provider. This also corresponds to the understanding of an average observant, informed and sensible user. The information in the present case is directly available, i.e. without considerable intermediary steps. Finally, the information is also available at all times.

Also § 1 (1) BGB-InfoV (BGB-Informationspflichten-Verordnung – Civil Law Regulation on Information Duties) is not sufficient to ground the application for an injunction, as the provision only relates to the identity and the address capable of delivery of the business, not however to authorised representatives of a legal person and not to the companies' register.

Furthermore, the application cannot be supported by § 312c (1), 1st sentence No. 1 BGB in conjunction with § 1 (1) BGB-Info-V, because the respondent's internet presence suffices the requirements of the principle of transparency according to § 312c (1), 1st sentence BGB. The requirements of this provision, via which Art. 4 (2) Directive 97/7/EC was transposed, go no further than the requirements of the principle of transparency in § 6, 1st sentence TDG, § 10 (2), 1st sentence MDStV.

Note: see also the judgment of the OLG Karlsruhe of 27.03.2002, GRUR 2002, 730.

#### Decision

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