



Beware of directory scams!



What's involved?

Time and again companies enter into contracts for trade directory listings against their wishes. Anyone who skims over forms and signs them without first giving them a thorough reading could be in for a nasty and costly surprise.

The review of the Unfair Competition Act (referred to below as the UWG) which came into force on 1 April 2012, has improved the protection against unfair business practices in this area through the introduction of two new provisions (Art. 3 Para. 1, p and q UWG).

How do these scams work?

Unsolicited requests for register entries

Sales letters for trade directory listings are often sent out as mass mailings by post or fax in the style of forms on which the company's address is already pre-printed. In order to obtain a listing, the recipient is requested to check the accuracy of the address, make any necessary corrections and indicate the products and services offered by the business.

Free and billable services are often presented in such a way as to lead hasty readers to believe that the entire service is free. Readers then sign the form without thinking, which subsequently turns out to be an expensive contract.

The terms of the contract with their undesired consequences are often abstrusely worded and hidden in the small print: By signing and returning the form the reader is concluding a contract which can run for a minimum period of between one and three years. The annual costs vary between CHF 300 and CHF 1,700 (EUR 249 and 1411).

Anyone using offer forms to advertise for listings in directories of any kind or for advertising contracts must make reference to the following in large type, in a prominent place and in clear, understandable language (Art. 3 Para. 1 lit. p UWG):

- the billable and private nature of the offer,
- the duration of the contract,
- the total price over the duration, and
- the geographic distribution, structure, minimum circulation and latest date of the publication.

These requirements also apply to offers which are submitted as part of a meeting in person or by telephone (for details see below).

Agents

Signing a form without reading it during an unsolicited visit by an agent may also yield unpleasant surprises.

Some agents assert that the listing is free. Others pretend they only need a signature to update the directory or to confirm that the data is correct. Agents regularly claim that the signature merely confirms that the agent has called on the business. However, anyone who blindly trusts such statements and signs a form runs the risk of concluding a costly contract against their wishes, in some cases spanning several years.

Unsolicited telephone calls

Many providers use cold calling to induce unsuspecting business people to enter into a contract. The person is led to believe that there is already an existing contract. In the event that they show no interest in "renewing", the provider asks them to sign and return a faxed form to terminate the contract. Of course, it is precisely by signing and returning the form that a contract with payment obligations is concluded!

Invoices disguised as offers for listings in a trade directory

Dubious providers sometimes send out offers for trade directory listings resembling invoices, in some cases together with a payment slip. They give recipients the impression that there is already an existing contractual relationship, but the contract is only concluded with payment of the invoice.

Other popular targets with such providers are owners of new brands or businesses. It is no coincidence that these people receive an "invoice" soon after their new brand or business is published in the Swiss Official Gazette of Commerce. The recipients believe they are receiving an invoice from the Institute of Intellectual Property or from the relevant cantonal commercial registry. By paying the dubious invoice they are concluding a contract instead of paying the amount they believe to be owing.

These business practices are in breach of Art. 3 Para. 1 q UWG).

Training for reception and general administrative staff is a must! In a large number of cases, contracts are finalised inadvertently by such staff.



[READ]
before signing!

What should you do if you find you have concluded a costly contract as a result of having signed a misleading form?

If you feel that you've been misled, you can proceed as follows: Do not pay the bill and contest the contract immediately by registered letter. Under Swiss law a declaration of rescission must be made within a year of the mistake having been discovered. In the event of a material error or deliberate intent to defraud, the contract is rendered null and void. One letter is enough. You can disregard any subsequent correspondence from the provider. The letter must contain at least the following information:

"I was misled by your form and I am therefore rescinding any contract that may have been concluded on the grounds of error and deliberate intent to defraud. The contract is therefore null and void".

You must however note the following: only the competent court may decide, in considering all the relevant facts, whether there is absent of consent and consequently whether the contract is rendered null and void. The matter is only brought before a court if one party chooses to take legal action.

Important: If you are pursued for non-payment you must submit a formal objection within ten days! The best thing to do is immediately lodge a formal objection with the debt collection authorities.

How can you deal with these directory scams?

Persons in Switzerland

Since 1 April 2012 any person who has been misled by a directory scam can file a complaint with the State Secretariat for Economic Affairs (referred to below as the SECO) using the complaints form. The form can be found on the SECO website (see below for details). The SECO can file criminal or civil proceedings if there is a threat against or breach of collective interests, i.e. if multiple persons have been affected by the same scam. On this basis complaints will be collated from persons affected in order to take corresponding measures in repeat cases. However, the SECO is unable to intervene in the individual case.

Anyone who finds themselves the victim of a directory scam can file a criminal complaint for unfair commercial practices at the police station nearest to their business premises. It is then up to the police to refer the matter to the relevant prosecuting authorities. In addition to a statement describing the facts of the matter and corresponding proof (signed form and any correspondence with the publisher of the industry directory), the complaint should also include the following concluding sentence:

For unsolicited offer forms or for offers for directory listings which are made by telephone, fax or at a meeting in person:
"For all of the abovementioned reasons I submit the following application: I request that criminal proceedings be instituted against XY due to contravention of Art. 3 Para.1 p of the Unfair Competition Act (UWG, SR 241) and that XY be punished accordingly".

For invoices for offers:

"For all of the above mentioned reasons, I submit the following application: I request that criminal proceedings be instituted against XY due to contravention of Art. 3 Para. 1 q of the Unfair Competition Act (UWG, SR 241) and that XY be punished accordingly".

In addition, it is also possible to file a civil suit for unfair competition at a court with jurisdiction over the person's business location. A civil suit can also include claims for recovery and compensation.

Persons living abroad

Persons living outside Switzerland whose economic interests are affected by a scam can file a complaint with the State Secretariat for Economic Affairs (SECO) (see address below). If several persons are affected by the same scam, SECO can file a criminal or civil complaint with a view to seeking an appropriate verdict against the perpetrator of the dubious practices in question.

The SECO unable to file any claims for compensation

The SECO is unable to file any claims for recovery or compensation either for persons domiciled in Switzerland or for foreigners. Any person who has lost money must file the legal proceedings themselves.

Contact

State Secretariat for Economic Affairs SECO
Legal Affairs Division
Holzikofenweg 36
3003 Berne

E-mail: fair-business@seco.admin.ch

Complaints form:

[Download](#)