[DE] Berlin court rules on e-mail advertising

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In December 1997, the Traunstein Regional Court set a precedent by prohibiting the sending of unsolicited e-mail advertising via the Internet, and the Regional Court in Berlin has now given two decisions which follow the same line.

For a long time already, the courts have consistently upheld that the sending of unsolicited advertising matter and prospectuses by fax violates Section 1 of the Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb - UWG) and also Article 823 I of the Civil Code (Bürgerliches Gesetzbuch - BGB), when the recipient has not consented or his consent cannot be inferred from an existing business relationship. In a judgment given on 3 February 1988, the Federal Court had also ruled that the sending of unsolicited e-mail advertising via teletext constituted unfair competition. Unlike the Internet, teletext is a closed technical system, which was operated by the then Federal Post Office. The Federal Court argued that the persons at whom this material was aimed found it unacceptable that they should have to separate it from other messages, and pay additional telephone charges for receiving it.

In finding, in both cases, that e-mail advertising on the Internet constituted unfair competition, the Berlin Regional Court also based it's decision on the fact that the recipient was obliged to spend time, money and effort winnowing out this material. It decided that the recipient's status - private individual, self-employed person or tradesman - was irrelevant to the question of unfair competition.

LG Berlin, Beschluß vom 14. Mai 1998, Az. 16 O 301/98.

Berlin Regional Court, decision of 14 May 1998, File No. 16 O 301/98

LG Traunstein, Beschluß vom 18. Dezember 1997, Az. 2 HK O 3755/97.

Traunstein Regional Court, decision of 18 December 1997, File No. 2 HK O 3755/97.

LG Berlin, Beschluß vom 2. April 1998, Az. 16 O 201/98.

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Regional Court of Berlin, decision of 2 April 1998, Az. 16 O 201/98.

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