[DE] Liability of an Internet Service Provider

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In a judgment of 4 November 1999, the Hamburg Regional Court of Appeal (Oberlandesgericht - OLG) ordered an Internet service provider (ISP) to desist from further co-operation in the unlawful competition activities of a website operator.

Acting on behalf of the website operator, the ISP arranged registration of a ".com" domain, registering itself under "tech-c", "zone-c" and "billing-c", and citing the website operator as an administrative contact under "admin-c". As is normal practice in respect of a domain name registration, the ISP also provided one of the two nameservers required for incorporation into the domain name of the lettering required for website address purposes (e.g.

The website operator, a company with its headquarters outside Germany, ran worldwide gambling activities via the website in question without obtaining the necessary authorisation in Germany. The Court held that illegal gambling constituted a ground for declaring a violation contra bonos mores of § 1 of the Gesetz gegen den unlauteren Wettbewerb (Unfair Competition Act - UWG).

The Court considered the ISP's supporting role as constituting a separate infringement of competition law, thus contesting the view that technical services cannot be held liable in accordance with § 5 para. 3 of the Teledienstegesetz (Teleservices Act - TDG). Unlike access providers, who merely provide access to the Internet and have no influence over the content on offer, and who are therefore exempt from liability, the registration of a domain name and the resulting offer of a nameservice amounted to a contractual relationship between the content provider and the technical service provider. Nevertheless, even in the case of the registration of a domain, the Court considered the assumption of liability to depend on knowledge of the website operator's breach of competition. In the present case, the continued use of the nameservice and/or continuation of activities under tech-c, zone-c and billing-c in the knowledge of the content provider's breach of competition were considered to constitute the quality of distortion required to invoke § 1 UWG.

Urteil vom 4. November 1999. Az. 3 U 274/98.

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