[DE] Generic and otherwise Unqualified Domain Names Breach Competition Law

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The Oberlandesgericht Hamburg (Regional Court of Appeal - OLG) in a judgment of 13 June 1999 dismissed an appeal against a ruling of the Hamburg District Court (Landesgericht -LG) obliging the defendant to desist from using his Internet domain name "www.mitwohnzentrale.de" without further qualification for commercial purposes. The plaintiff was a competitor in the commercial short-term rented property market.

The OLG deemed use of the domain name to amount to unfair competition within the meaning of § 1 of the Gesetz gegen den unlauteren Wettbewerb (Unfair Competition Act - UWG). In the Court's view, the registered name at issue led to a channelling of custom that breached competition rules and to an effective monopoly of the generic term Mitwohnzentrale. Since a substantial proportion of Internet users sought access to a homepage by keying in an Internet website address rather than using a search engine, use of the word Mitwohnzentrale led users, who had no further cause to search for other service providers, directly to the defendant's homepage. The defendant was considered to have profited from this user behaviour in breach of competition law.

A further decisive element was the fact that the domain name did not refer to a given structure, but was a generic trade description. Even from a trademark point of view, the term Mitwohnzentrale was a purely descriptive, unqualified generic denomination that by its very nature could not be protected. The use of generic denominations that of necessity were unprotected by trademark law was not intended to denote individual service providers outside the sphere of protection enjoyed by registered or established trademarks.

In conclusion, the Court did however state that the defendant's unfair conduct did not require him to renounce his domain name entirely; it would be enough to oblige the defendant to qualify it sufficiently.

The defendant has appealed this decision.

Urteil vom 13. Juli 1999; AZ 3 U 58/98.

Judgment of 13 July 1999; file No. 3 U 58/98.

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