

[DE] Obstruction via typing-error domain can breach Unfair Competition Act

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In a ruling of 22 January 2014, the *Bundesgerichtshof* (Federal Supreme Court - BGH) decided that the use of typing-error domains to intercept customers can constitute an infringement of the ban on deliberate obstruction of competitors enshrined in Article 4(10) of the *Gesetz gegen den unlauteren Wettbewerb* (Unfair Competition Act - UWG).

The operator of the domain “www.wetteronline.de”, who operates an online weather service, had brought an action against the owner of the domain “www.wetteronlin.de”. Users who had landed on the latter website due to a typing error had been taken to the website of a private health insurance company. The plaintiff argued that it had therefore been unfairly obstructed and that its right to use its own name had been breached. Its claim for an injunction to stop the typing-error domain being used, for the domain to be deleted and for compensation, had been upheld firstly by the *LG Köln* (Cologne District Court, case no. 81 O 42/11) on 9 August 2011 and then by the *OLG Köln* (Cologne Appeal Court, case no. 6 U 187/11) on 10 February 2012.

The BGH, which was responsible for hearing the defendant’s appeal, confirmed the lower instance courts’ view that the interception of customers infringed the ban on deliberate obstruction of competitors enshrined in Article 4(10) UWG, in so far as users who landed on the website found at the typing-error domain were not directly and clearly informed that they were not on the “www.wetteronline.de” website. However, the BGH rejected the application for the domain “www.wetteronlin.de” to be deleted, since the plaintiff had not been unfairly obstructed simply through the registration of the domain and it was possible that the domain could be used lawfully. The content of the website could be adapted, for example.

However, as regards the claim that the plaintiff’s right to use its own name had been breached, the BGH overturned the Cologne Appeal Court’s decision on the grounds that, in the judges’ opinion, the title “wetteronline” was not sufficiently distinctive to warrant protection. Rather, it was a purely descriptive term that identified the plaintiff’s area of business, i.e. “online” services concerning the “weather”.

Urteil des BGH vom 22.1.2014 (Az. I ZR 164/12)

<http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=67088&pos=0&anz=1>

Federal Supreme Court decision of 22 January 2014 (case no. I ZR 164/12)

