# [DE] Supreme Court rules on illegal sale of bot software (World of Warcraft II)

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*Ingo Beckendorf*
*Institute of European Media Law (EMR), Saarbrücken/Brussels*

On 12 January 2017, the Bundesgerichtshof (Federal Supreme Court - BGH) ruled that the sale of the so-called “bot software” that allows players of an online role-playing game to automatically enhance their avatars is illegal. It also prohibited the software developer Bossland GmbH from continuing to sell bot software for the popular online game “World of Warcraft” (case no. I ZR 253/14).

Blizzard Entertainment, developer of the online role-playing games “World of Warcraft” and “Diabolo III”, had complained about the sale of Bossland bots “Honorbuddy” and “Gatherbuddy”. Blizzard Entertainment claimed that the sale of such bots was unlawful under competition law because the developer’s general terms and conditions, which banned the use of automation software, were binding on players of the game. In response, Bossland GmbH had argued that the general terms and conditions did not form an effective part of the contractual relationship between the provider and the player. It claimed that, when purchasing the client software on a physical data carrier, the buyer had no knowledge of the relevant terms and conditions.

The BGH rejected the argument of Bossland GmbH, and found that it was necessary to distinguish between the purchase of client software on the one hand and online registration to participate in the game on the other. The player firstly entered into an agreement with the distributor to purchase the client software required to access the online game, which needed to be installed on his or her computer. When creating a player account, the player then entered into an agreement with the game organiser on the use of software stored on its server, which was used to create the virtual game world and to constantly update and coordinate players’ moves. Agreements on different computer programs were often structured in different ways. Despite the economic nature of the agreements, even if the terms and conditions for the use of online functions were not communicated to players until they created an account, they still formed an effective part of the aforementioned relationship. If a player flouted the game rules contained in the terms and conditions, which prohibited the use of bot software, the sale of such software was also illegal because it represented a deliberate obstruction of a competitor, within the meaning of Article 4(4) of the of the Gesetz gegen den unlauteren Wettbewerb (Unfair Competition Act - UWG), and was therefore an act of unfair competition. According to the BGH, from a

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general point of view, an impact on a competitor's product should be classified as unfair if it circumvented a protective measure specifically designed to prevent such an impact.

In a previous ruling, the BGH had also decided that it was unlawful to copy Bossland's bot software (ruling of 6 October 2016, case no. I ZR 25/15, "World of Warcraft I", see IRIS 2017-4/10). Both of these precedent-setting BGH decisions are very significant for computer game developers in Germany and for players of online role-playing games. Players who use bot software in the future can now expect their player accounts to be permanently suspended.

### *Urteil des Bundesgerichtshofs vom 12. Januar 2017 (Az.: I ZR 253/14)*

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=77334&pos=0&anz=1

*Ruling of the Federal Supreme Court of 12 January 2017 (case no. I ZR 253/14)*

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