[DE] OLG München rules that ad blocker does not breach cartel, competition or copyright law

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In a ruling of 17 August 2017, the OLG München (Munich Court of Appeal) decided that open source software used to block advertising on websites did not infringe cartel law, any other kind of competition law or copyright law (case no. 29 U 1917/16).

The plaintiffs in the case at hand operate free websites with journalistic content that are financed through advertising. The defendant distributes free open source software that can block advertising on websites. The details of which content is blocked by the software are not initially provided; rather, this information is found in the form of so-called 'blacklists', which are suggested to the user. Under its default setting, the software does not block advertising that, according to its own criteria, is not intrusive ('whitelist'). Website operators can ask the defendant to unblock access to their websites, although operators of large websites have to pay to be 'whitelisted'. The plaintiffs argued that the software would cause them a noticeable loss in sales and that the defendant wanted to deliberately obstruct them and pressurise them into paying for their content to be 'whitelisted'.

By rejecting the plaintiffs' appeals, the OLG München confirmed a previous district court decision to dismiss their complaints on the grounds that they were not entitled to any injunction, information or compensation under competition, cartel or copyright law.

The court held that the defendant had not deliberately obstructed the plaintiffs and that its business model was not based on unlawful aggressive advertising. Moreover, since it did not hold a dominant market position, it had not infringed cartel law. The use of the ad blocker was not unlawful, since the plaintiffs had given users - including those that used the ad blocker - unhindered access to their websites, merely asking them not to use the blocker. The court considered this to constitute approval on the plaintiffs' part, which was why it deemed that no offence had been committed and that the copyright claims were also unfounded. Since the OLG Köln (Cologne Court of Appeal) had issued a decision that contradicted this ruling as regards claims under competition law, the Munich court ruled that its decision could be appealed.

Pressemitteilung des OLG München vom 17. August 2017

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https://www.justiz.bayern.de/gerichte-und-behoerden/oberlandesgerichte/muenchen/presse/2017/57.php

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