

## AUSTRIA



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<b>1. Case Report:</b>	
<b>Topic:</b>	Misleading Advertising
<b>Where:</b>	Austrian Supreme Court
<b>When:</b>	March 13, 2002
<b>What happened:</b>	<p>The defendant was the publisher of an internet register. In this register the data of companies and enterprises was registered and published on the internet. The companies and enterprises who ordered an entry in the register had to pay an annual fee.</p> <p>The defendant sent offers to a large number of companies and enterprises for this registration. These offers consisted of a proposal for an entry in the "online company register". The addressee was asked to examine the data, which the defendant had obtained from the public commercial register, and to correct any errors. The addressee was further asked to confirm the (corrected) proposal and send it back to the defendant.</p> <p>The information that by returning the offer a contract for registration was concluded and a fee was payable was only contained in the small print.</p> <p>The Association for the Protection of Fair Competition started court action against the defendant for illegal and misleading advertising.</p> <p>The Austrian Supreme Court admitted the plaintiff's claim. The Court ruled that any advertising must be clearly identifiable. It is an offence against the rules of fair competition if a letter sent to a customer is misleading and does not make sufficiently clear that the letter is an offer for a registration, for which fees have to be paid. When reading the letter one could have the impression that the letter's only purpose is for the correction of an existing entry.</p>
<b>Comment:</b>	It is the general attitude of the Austrian Supreme Court that offers for a registration and similar services must be clearly identifiable as such. In particular it must be made clear that accepting the offer will result in fees.

<b>2. Case report:</b>	
<b>Topic:</b>	Austrian National Tennis Association
<b>Where:</b>	Austrian Supreme Court
<b>When:</b>	October 15, 2002
<b>What happened:</b>	<p>The plaintiff is the general distributor for "Tretorn" tennis balls in Austria.</p> <p>The defendant is the Austrian National Tennis Association. The National Tennis Association is the roof organization for the local tennis associations.</p>

	<p>The local tennis associations in Austria organize tournaments. Furthermore there are several leagues and championships between the local tennis associations and their members.</p> <p>The results of all official tournaments and championships will only be approved by the Austrian National Tennis Association, if the official tennis balls, approved by the Austrian National Association, were used. Using other tennis balls leads to the annulment of the results of a tournament or of a match in a championship and could also lead to the expulsion of the respective member from the Austrian National Tennis Association.</p> <p>The general distributor for Tretorn tennis balls sued the Austrian National Tennis Association on the grounds that by approving only tennis balls of a certain trademark and by forcing the local tennis associations to use only these approved tennis balls, they would be excluded from a major segment of the Austrian market.</p> <p>The Austrian Supreme Court admitted the plaintiff's claim. The Court ruled that the Austrian National Tennis Association, by allowing the local members only to use the approved tennis balls, is violating European antitrust law. The Austrian National Tennis Association is excluding all the other competitors in the tennis market from a major segment of the Austrian market. Such violation of European antitrust law is at the same time a violation of the Austrian Act Against Unfair Competition.</p>
<b>Comment:</b>	Violation of European antitrust law is also a violation of the Austrian Act Against Unfair Competition.

<b>3. Case report:</b>	
<b>Topic:</b>	Illegal Photographing on Private Property
<b>Where:</b>	Austrian Supreme Court
<b>When:</b>	January 29, 2002
<b>What happened:</b>	<p>The plaintiff is the owner of a swimming pool. The defendant, a construction company, took photos of the swimming pool in order to have them published in their catalogue. To take the pictures the defendant had to enter the private property of the owner of the swimming pool.</p> <p>The owner of the swimming pool as plaintiff started court action against the defendant. The court action was based on the argumentation that, although the swimming pool was not protected under the Intellectual Property Act, the picture was illegally taken as the defendant entered the plaintiff's private property without permission. Therefore the defendant was using an illegal picture in his advertising.</p> <p>The Austrian Supreme Court admitted the plaintiff's claim. The Court found that it is illegal to enter private property without the permission of the owner in order to take a photograph. Furthermore it is illegal advertising to use such pictures in a catalogue. The defendant therefore had to refrain from any further use of this picture.</p>
<b>Comment:</b>	Although the swimming pool as an object did not have protection under the Intellectual Property Act, the Austrian Supreme Court found that it is

	illegal to use the image of the object if the photograph was illegally obtained.
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