

G-Regs™

Germany - WBZ Overview Car advertising



Full title: **Overview. The Centre for Protection against Unfair Competition (Wettbewerbszentrale) Review of Automotive/ motor vehicles advertising**

Introduction

Note: The UWG – Act Against Unfair Competition has been re-structured including changes to a number of its provisions (via the 2nd Law Amending the Act Against Unfair Competition of 02/12/2015¹). In addition, The Price Indication Ordinance (PAngV) has been amended; Article 11 of Law of 11/03/2016 has amended s. 6a ref. consumer credit advertising, and also amended s. 1 (although this does not affect the commentary referenced in Price advertising below). Where a provision is no longer in date or applicable, this has been referenced in the footnotes.

Overview

"Automotive industry. The priority area is concerned with the advertising of motor vehicles, in particular.

An overview of typical situations and circumstances can be found under the following headings:

- Price advertising
- Advertising with so-called asterisk references
- Finance advertising
- Vehicles registered for the day
- Unfair fax advertising "We'll buy your car..."
- Common code for the vehicle trade on the Internet

Price advertising

PRICE ADVERTISING

The vehicle trade/ market is a fiercely contested market. The consumer's reluctance to buy is mainly countered by way of discounts. To illustrate the attractiveness of such an offer, car dealers very often advertise with price comparisons. To make the price appear lower, car dealers sometimes advertise with a price for which the vehicle concerned is not available, e.g. by the vehicle illustrated in the advertisement being fitted with special extras, while the price relates to the standard vehicle model. In addition, the delivery cost for the vehicle is often not included in the advertised price.

Delivery Cost

Delivery cost

When advertising a new vehicle, car dealers frequently use the wording "€ ... plus delivery ... €" (with the amount given), though often also just as "€ ... plus delivery" (without the amount being stated). Stating the price in this way is in breach of the provisions of the Price Indication Regulation/ Ordinance (PreisAngV), which must be observed when advertising is (at least also) aimed at consumers (see Section 1(2) PAngV²).

In cases of doubt, advertising also aimed at consumers is deemed to exist if it is not expressed clearly and unequivocally that consumers are not being addressed. This particularly applies in cases where advertising takes place in media which is generally accessible to the public. The reference "Sale to dealers only" ("*Verkauf nur an Händler*") is regarded as adequate by the

¹ Federal Law Gazette/ BGBl, Part I, no. 49, [p. 2158](#). Entry into force: 10/12/2015. Adopted by Bundestag on 05/11/2015.

² <http://www.gesetze-im-internet.de/pangv/BJNR105800985.html> (in German)

URL of source: <https://www.wettbewerbszentrale.de/de/branchen/Kfz-Branche/ueberblick/>

Federal Supreme Court. The (fact of the) car dealer not wanting to sell the advertised vehicle to consumers at all, is irrelevant/ immaterial (cf. Federal Supreme Court, [judgement of 29.04.2010](#) >>, ref. I ZR 99/08, paragraph 26 – “Price advertising not including VAT”).

Under Section 1(1), line 1 of the Price Indication Regulation, the prices given to consumers must be those that have to be paid including Value Added Tax and other price components (= final price). Other price components in this regard are all prices and costs included by a car dealer when calculating its final prices. These also include the delivery costs for a new vehicle, according to the Federal Supreme Court, judgement of 16.12.1982, ref. I ZR 155/80 – “Final vehicle price”. The delivery costs must therefore already be included in the vehicle price advertised. Although a breakdown of the final price is possible, the final price must be given additionally. However, emphasis has to be placed on stating the final price in this respect (Section 1(6), line 2 of the Price Indication Regulation).

Price comparisons

Section 1 (1), 1st line and Section 1(6), 2nd line of the Price Indication Regulation comprises standards to regulate market conduct for the purpose of informing consumers and providing them with optimum price comparison possibilities (see Köhler/Bornkamm, Law against Unfair Competition (UWG), 30th edition 2012, Section 4 (examples of unfair commercial practices) of the Act Against Unfair Competition³, paragraph 11.142 f.). Any infringement of the aforementioned provisions of the Price Indication Regulation is therefore also an unfair commercial practice pursuant to Section 4 (11)⁴ (now s. 3a) of the Act Against Unfair Competition.

It is not (or no longer) just a trivial matter!

Trivial Matters

If, for example, the delivery costs were stated next to the vehicle price in a newspaper advertisement, the courts had found the infringement of the provisions contained in the Price Indication Regulation to be a trivial matter within the meaning of Section 3 of the Act Against Unfair Competition by virtue of consumers being quite capable of adding together the two amounts printed side by side (e.g. Higher Regional Court of Düsseldorf, judgement of 09.11.1999, ref. 20 U 14/99, as a result also the Higher Regional Court of Celle, ruling of 14.10.2004, ref. 13 U 187/04 and the Higher Regional Court of Hamm, judgement of 25.11.2005, ref. 2 U 137/04). In the view of most courts, a trivial matter within the meaning of Section 3 of the Law Against Unfair Competition no longer existed only if “plus delivery” was stated as the consumer then might not be able to calculate the final price (e.g. Higher Regional Court of Celle, ruling of 14.10.2004, ref. 13 U 187/04 and Higher Regional Court of Hamm, judgement of 25.11.2005, ref. 2 U 137/04; differing view, only the Higher Regional Court of Frankfurt/Main, judgement of 06.11.1997, ref. 6 U 153/97 and Higher Regional Court of Koblenz, ruling of 30.03.2000, ref. 4 W 157/00).

Since transposition of Article 7, Paragraph 4 c) of European Directive no. 2005/29/EC on unfair commercial practices in effect since 30.12.2008 into Article 5a, Paragraph 3, Clause 3 of the Unfair Competition Law, a trivial matter is now, however, also ruled out in the case of delivery costs being stated in figures next to the vehicle price where new vehicles, with reference to their features/accessories and indication of the price, “are provided in such a way that the average consumer can conclude the transaction”. An offer within the meaning of Article 145 of the German Civil Code is not necessary for the possible conclusion of the transaction according to the Federal Supreme Court, judgement of 29.04.2010, ref. I ZR 99/08, para. 33 – “Price advertising not including Value Added Tax”. Nor is any actual possibility of purchasing the goods, e.g. by means of order forms, required. It is sufficient if the consumer can make a commercial decision on the basis of the information obtained about the advertised

³ http://www.gesetze-im-internet.de/englisch_uwg/englisch_uwg.html#p0025 (UWG – English translation) **GRS Note:** subsequently amended – German updated version: https://www.gesetze-im-internet.de/uwg_2004/BJNR141400004.html - Section 4 is now entitled Consumer Protection – not examples of unfair commercial practices)

⁴ Section 4(11): “Unfairness shall have occurred in particular where a person... infringes a statutory provision that is also intended to regulate market behaviour in the interest of market participants”. Replaced by s. 3a (entitled: “Breach/ infringement of the law”): “Acting unfairly is where a person infringes a statutory provision that is also intended to regulate market behaviour in the interest of market participants and the violation is liable to noticeably affect the interests of consumers, other market participants or competitors.

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merchandise and its price (cf. ECJ, judgement of 12.05.2011, case no. C 22/10 – “Ving Sverige”), e.g. that the consumer would like to have more detailed information of the advertised vehicle from the car dealership and/or test drive the vehicle advertised. Under Article 5a, Paragraph 3, Clause 3 of the Unfair Competition Law, the final price in such a case is deemed to be essential information which must not be withheld from the consumer. Withholding essential information constitutes an unfair commercial practice pursuant to Article 5a, Paragraph 2 of the Unfair Competition Law that is always likely to appreciably affect the consumer’s ability to decide on the basis of the information. A trivial matter therefore cannot apply (cf. Federal Supreme Court, judgement of 04.02.2010, ref. I ZR 66/09, para. 21 – “Gallardo Spyder”; Federal Supreme Court, [judgement of 29.04.2010](#) >>, ref. I ZR 99/08, para. 32-33 – “Price advertising not including Value Added Tax”; cf. also Köhler/Bornkamm, Law against Unfair Competition, UWG, 30th Edition 2012, Article 5a of the Unfair Competition Law, recital 57).

Final decisions have now been delivered, e.g. Regional Court of Nürnberg-Fürth, judgement of 20.02.2012, ref. 1 HK O 9414/11.

Special feature of vehicle exchanges on the Internet (*internet car portals*)

Internet car portals

If new vehicles are advertised with prices in vehicle exchanges on the Internet (*lit.*) (i.e. online vehicle trading sites – such as autoscout24.com, mobile.de), the final price must be entered in the so-called price field. If the delivery costs are not included in the price entered in the price field, the search engine is manipulated, which represents an unfair commercial practice under Section 5(1)(2)⁵ of the Act Against Unfair Competition (*Wettbewerbszentrale: Wettbewerbszentrale News* of 26.10.2007⁶: “Search engine manipulation” anti-competitive – price indications for new vehicles in Internet vehicle exchanges must also contain delivery costs”).

Price comparison advertising

Price comparison

If a car dealer makes a price comparison with the advertised price, there is no objection to this under competition law as long as the price comparison is not misleading pursuant to Section 5(1)(2) of the Act against Unfair Competition.

(Former) recommended retail price of the automobile manufacturer

Former price

When advertising new cars, the car manufacturer’s recommended retail price is often used as the comparison/reference price. The condition for this is that the car manufacturer has actually issued a recommended retail price. This is not the case, for example, with dealers’ own special models that have been upgraded with optional special accessories purchased on the free market. Another condition is that the manufacturer’s recommended retail price was determined on the basis of a serious calculation as the consumer price and that it is (still) taken into consideration as the consumer price at the time of advertising. With discontinued models, the car dealer must therefore give a comparison of the advertised price with the automobile manufacturer’s former recommended retail price.

In its judgement of 07.12.2006, the Federal Supreme Court found that use of the common abbreviation “RRP” (German: “UVP/ UPE” - Unverbindliche Preisempfehlung) for the manufacturer’s recommended retail price had become generally accepted and that an averagely informed, relevantly attentive and knowledgeable consumer could associate this with the retail price recommended by the manufacturer (Federal Supreme Court, [judgement of 07.12.2006](#) >>, ref. I ZR 271/03 – “RRP”). The reasoning of the Federal Supreme Court should then apply equally to the “UPE” (Unverbindliche Preisempfehlung) abbreviation more usual in the German vehicle industry for the car manufacturer’s recommended retail price.

⁵ Section 5 (1) Unfairness shall have occurred where a person uses a misleading commercial practice, which is likely to cause the consumer or other market participant to make a commercial decision which he would otherwise not have taken. A commercial practice shall be deemed to be misleading if it contains untruthful information or other information suited to deception regarding the following circumstances... (2) the reason for purchase such as the existence of a specific price advantage, the price or the manner in which the price is calculated, or the conditions on which the goods are supplied or the services provided.

⁶ <https://www.wettbewerbszentrale.de/de/aktuelles/news?id=708>

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However, the car manufacturer's recommended retail price does not apply as a reference or comparison price in the advertising of used vehicles.

"New price" ("Neupreis") for used vehicles (Note: "new" equating to the original price or equivalent price of it brand new, NOT as in a new/ recently changed/ reduced price)

A comparison of the price advertised for a used vehicle with the "new price" or "former new price/ original price" can be given only to a very limited extent as it cannot necessarily be inferred from the advertising what price the comparison or reference price is.

New Price

It could, for example, be the price the car dealer was asking for a vehicle like the one advertised as a new vehicle; the price for which the advertised vehicle was actually sold as a new vehicle; the price the car dealer paid for the advertised vehicle or the automobile manufacturer's (former) recommended retail price for the advertised vehicle. If there are different prices under consideration, the *Wettbewerbszentrale* strongly advises making it clear in the advertising material what price is meant, also because the courts have differing views in this regard.

If the advertising does not contain any explanation regarding what price is meant, a misleading price comparison is deemed to have been given in any such case according to the Higher Regional Court of Stuttgart, judgement of 28.04.1997, ref. 2 U 215/96, which is, at the same time, also anti-competitive. The Higher Regional Court of Cologne, judgement of 19.09.2003, ref. 6 U 36/03 does not rule in quite so strict terms. The price comparison may be misleading. However, as the consumer knows that the recommended retail price of the automobile manufacturer is never paid for a new vehicle, rather a new vehicle is only purchased at the lower company price of the car dealer, the error is not relevant in terms of competition if the "new price" corresponds to the price that was actually paid for the advertised vehicle as a new vehicle. Nor does the Higher Regional Court of Schleswig, judgement of 05.02.2002, ref. 6 U 78/01 rule quite as strictly as the Higher Regional Court of Stuttgart, though the result is different to that of the Higher Regional Court of Cologne. As it is only a matter of whether the consumer could have imagined "a higher price ... than the lowest conceivable new price", a relevant error does not exist in terms of competition if the "new price" corresponds to the automobile manufacturer's (former) recommended retail price for the advertised vehicle insofar as the earlier company price of the car dealer was not lower.

Using the abbreviation "NP" for "new price" (*Neupreis*) is also advised against. Irrespective of the fact that the abbreviation "NP" could also be understood as "normal price" (*Normalpreis*), which embraces additional potential for being misleading, the same comments apply as for "new price". This is confirmed by a judgement recently handed down by the Regional Court of Fulda on 26.03.2012, ref. 6 O 8011, in which a vehicle with so-called one-day registration had been advertised in a price comparison with an "NP". Although the court conceded to the car dealer that "NP" concerned the "new price", a "new price" for a vehicle registered for one day⁷ was an ambiguous comparison price. The court only ruled out the price actually paid for the advertised vehicle as a new vehicle. As the range of possible comparison prices was thus not confined to the automobile manufacturer's recommended retail price, which was, at the same time, also said to be the car dealer's former company price that had been asked for the vehicle before it was given the one-day registration, the court ordered the car dealer to desist.

Asterisk references

ADVERTISING WITH SO-CALLED ASTERISK REFERENCES

A special discount or additional service and warranty packages, for example, are frequently advertised as an attention-getter/ eye-catching feature, though their use depends on certain conditions (e.g. for a limited period, special or discontinued/ phased-out model, individual vehicle colours or the fact that the old car is not traded in). The advertising statement then often has an asterisk or one or more numbers added. There is no objection to this as long as the relevant conditions are conveyed to the customer in a sufficiently transparent manner.

⁷ i.e. meaning vehicles which have only be registered for a single day, known as one-day-registrations. Nearly new vehicles are, for example, vehicles that are frequently supplied by dealers with a one-day registration and which are sometimes sold at a substantial discount. See heading "Vehicles registered for the day" below for more information

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Relevant in this respect is Section 4(4)⁸ of the Act Against Unfair Competition (*Please refer to footnote*) which requires that conditions for the use of sales promotion measures such as discounts, add-ons or gifts to be stated clearly and *lit.* unambiguously (unequivocally). A clear and unambiguous statement is deemed as no longer having been made in those cases, in particular, where the asterisk or the number(s) are explained in such small print – often vertically on the left or right edge of a newspaper advertisement – that the customer is simply not able to take note of the content of the explanations. This also applies to the case of a continuous body of text without any paragraph in which, however, a whole range of numbers are dealt with.

Finance Advertising

FINANCE ADVERTISING

NOTE: S. 6a PAngV has been amended via Article 11 of the Act implementing the Residential/ Mortgage Credit Directive and amending commercial regulations of March 11 2016⁹.

The implementation of Consumer Credit Directive 2008/48/EC on 11.06.2010 resulted in considerable changes for advertising the financing of vehicles.

The Directive is aimed at strengthening the position of the consumer vis-à-vis credit institutions and standardising information in relation to the conclusion of a credit agreement in all Member States of the EU. Another aim of the Directive is to counteract teaser offers/ inducements with interest rates that are eventually not accessible for most consumers.

Article 6a of the Price Indication Regulation (PAngV)

Article 6a of the Price Indication Regulation must now be observed where advertising is carried out for the financing of vehicles with interest rates or other figures concerning the costs of the credit agreement. Article 6a of the Price Indication Regulation does not apply to all commercial contracts. If reference is only made in the advertising to the possibility / option of finance, e.g. "finance available / possible" ("Finanzierung möglich", Article 6a of the Price Indication Regulation also does not apply. Further exceptions are contained in Article 491 of the German Civil Code, e.g. in the event of a net credit amount of less than €200 or where the credit is repaid within three months and is associated with minimal costs only (cf. Article 491, Clause 1 and Clause 3 of the German Civil Code)¹⁰.

If the advertising states "0.00% annual percentage rate (APR)", it is contentious whether Article 6a of the Price Indication Regulation is to be observed. However, as 0 is a figure and an annual percentage rate of 0.00% is an interest rate, this should not really be in doubt.

Article 6a of the Price Indication Regulation equally applies to leasing agreements where the consumer is given the option of purchasing the vehicle on expiry of the lease period or the consumer must otherwise pay the residual value (cf. Article 506, Paragraph 2 of the German Civil Code). The only exception here are pure kilometre leasing agreements.

Article 6a of the Price Indication Regulation is to be observed regardless of whether the advertising is placed in a newspaper advertisement, on the radio or TV or in a flyer or on the Internet. Article 6a of the Price Indication Regulation therefore also applies, for example, to price labels on the vehicles and to brochures on display on the business premises.

Standard information

⁸ Section 4 (4) UWG: Unfairness shall have occurred in particular where a person... does not clearly and unambiguously state the conditions for taking advantage of sales promotions such as price reductions, premiums or gifts. **Note:** Following amendment to UWG, this provision has been abolished. However, the provision might now be covered under the new s. 4a (aggressive commercial practices), in particular, the practice of exerting undue influence: exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed decision.

⁹ In German: <http://dipbt.bundestag.de/dip21/brd/2016/0084-16.pdf>

¹⁰ English translation of German Civil Code here: http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p1766
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Standard Information

At least the following information on the costs of the credit agreement (= standard information) must be formulated "in a clear, understandable and prominent manner" pursuant to Article 6a (1) and (2) of the Price Indication Regulation and be explained pursuant to Article 6(3) of the Price Indication Regulation using a representative example:

- Borrowing rate (= previous nominal interest rate) with an explanation of whether it is fixed, variable or a combination of the two.
- All costs, in euro, incurred by the consumer in concluding the credit agreement, e.g. for the safekeeping of the car registration book, credit processing fees, etc.; if not quantifiable, the consumer must be made aware "in a clear, understandable and prominent manner" that such costs are incurred when concluding the credit agreement.
- Net loan amount = sum of all amounts made available to the consumer on the basis of the credit agreements and which have to be repaid by him/her.
- Annual percentage rate with two decimal places.
- Term of the agreement in months if a particular term is advertised.
- Cash price
- Amount of the monthly instalments
- Amount of any deposit
- Amount of any final instalment
- Total amount of the credit where possible
- The consumer must be made aware of the costs of any insurance contract if it is a mandatory condition for the granting of the credit, e.g. payment protection insurance, or any other contract for other additional services; if not quantifiable, the consumer must be made aware "in a clear, understandable and prominent manner" together with the annual percentage rate that such a contract has to be concluded additionally and is associated with further costs.
- Credit brokering reference = ... brokered for ...

The credit institutions consider that the "creditworthiness provided" information should be given in addition in order not to give the prospective consumer the false impression that the credit agreement can be concluded on the basis of the parameters and conditions set out in the representative example. Under Article 6a (3) of the Price Indication Regulation, this could still be denied to one third of prospective consumers.

Clear, understandable/ unambiguous and prominent

Clarity

The standard information must be worded "in a clear, understandable and prominent manner". This means the information must be highlighted visually or acoustically close to / near the advertised interest rate.

"Prominent" means "visually, acoustically or otherwise perceptibly highlighted in a special way vis-à-vis (i.e. in relation to) other information".

The statutory changes do not mean that an eye-catching advertisement with an annual percentage rate or monthly instalments can no longer be considered. It is more a case of the advertiser no longer being able to merely highlight a "particularly favourable number", e.g. an "annual percentage rate from ...%" or "monthly instalments from ... €". The advertiser equally has to refer to the other conditions for financing the vehicle.

It is not necessary for the standard information to be highlighted in exactly the same way as the "particularly favourable number". It needs to stand out from the "other information". For vehicles, the "other information" is likely to concern, in particular, kW/HP, mileage, features/accessories, etc. The criteria for "highlighting" will presumably lead to a discussion similar to that concerning the information in relation to fuel consumption and CO2 emission values arising from the Car Energy Consumption Labelling Regulation (Pkw-EnVKV). In this case too, however, it will not be possible to rely solely on pixel size with regard to print media. Prominent presentation of the information will also play a part as well as, for example, whether or not it is structured, etc.

The standard information must, in any case, be part of the attention-getting main message of the advertising, e.g. "annual percentage rate of ...%" or "monthly instalments only ...". It is therefore also clear that an asterisk displayed in continuous text at the edge of an advertisement or in a TV spot is not sufficient. We have to wait and see how the courts will rule in this regard.

Related to TV and radio, it is not ruled out that a phrase like the well-known one from pharmaceutical advertising "Regarding risks and side effects" will be required. As TV involves not only listening but also looking, displaying the standard information for an adequate amount of time could also be sufficient. Here, too, we have to wait and see how the courts will rule on this point.

Representative example

The standard information then has to be explained using a representative example.

Representative example

An example is representative when it can be expected that two thirds of the sought-after consumers would be able to conclude the credit agreement on the terms listed in the example. Although Article 6a (3) of the Price Indication Regulation focuses only on the annual percentage rate in this regard, it follows from Article 4, Paragraph 2 of the Consumer Credit Directive No. 2008/48/EC¹¹ that the representative nature of the example relates not only to the annual percentage rate but, rather, to all the standard information concerning the costs of a credit agreement and that the representative example also has to be worded "in a clear, understandable and prominent manner".

If the terms and parameters of a credit are fixed, the representative example from Article 6a (3) of the Price Indication Regulation corresponds to the standard information arising from Article 6a, Paragraphs 1 and 2 of the Price Indication Regulation. If at all necessary, the reference should suffice that the standard information mentioned simultaneously forms the representative example arising from Article 6a of the Price Indication Regulation, which can be worded as follows for example:

"The information corresponds at the same time to the 2/3 example under Article 6a, Paragraph 3 of the Price Indication Regulation."

If, on the other hand, the advertisement seeks to grab attention with a "from" interest rate or "monthly instalments from ... €", for example, the entire interest margin or range of monthly instalments must be stated in the standard information arising from Article 6a, Paragraphs 1 and 2 of the Price Indication Regulation and, in addition, a representative example given in this regard pursuant to Article 6a, Paragraph 3 of the Price Indication Regulation which is based on an annual percentage rate and from which it can be expected that at least two thirds of the sought-after consumers would actually be able to conclude the credit agreement on the terms, conditions and parameters set out in the representative example.

How the advertising should be designed when advertising generally for the financing of a vehicle category, such as VW Golf, Ford Focus, BMW 3 series, etc., is completely open in this regard. Finance advertising relating to the entire range of a car brand is likely to be equally difficult. Does the representative example arising from Article 6a, Paragraph 3 of the Price Indication Regulation now have to be based on a vehicle with average features or is it sufficient to base it on a price that two thirds of customers can be expected to spend on cars like the vehicles advertised? In this case, too, it will eventually depend on how the courts decide.

Infringements against Article 6a of the Price Indication Regulation

As Article 6a of the Price Indication Regulation is based on the implementation of Consumer Credit Directive 2008/48/EC, the standard information regarding the costs of credit represents, at the same time, essential information that may not be withheld from a consumer (cf. Article 5a, Paragraph 4 in conjunction with Paragraph 2 of the Unfair Competition Law).

¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:133:0066:0092:EN:PDF>

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Infringements

Car dealers who do not observe the requirements of Article 6a of the Price Indication Regulation can be given a warning and be subjected to a cease and desist order.

Contraventions of Article 6a of the Price Indication Regulation are also punishable as a misdemeanour under the Economic Offences Act (WiStGr) (cf. Article 10, Paragraph 2 of the Price Indication Regulation), which can result in fines of up to €25,000 (Article 3 of the Economic Offences Act).

Strict monitoring of compliance with the amended provisions by consumer protection organisations is to be expected.

Customer dialogue

The statutory changes also impact on the customer dialogue.

If a vehicle is financed, the dealer must provide the consumer with a whole range of further information concerning the content of the credit agreement and which is summarised in a standardised sample form entitled "Standard European Consumer Credit Information" (SECCI) and made available by the financial institutions providing the credit.

Customer Dialogue

Furthermore, the dealer must also inform the consumer of any commission it may receive from the financial institution concerned.

One-day registration**VEHICLES REGISTERED FOR THE DAY (aka one-day-registration vehicles)**

A one-day-registration vehicle is a new vehicle that has been registered to the dealer for one or even a few days. The registration is only on paper. The car is not used on the road.

It is a sales promotion instrument/ tool that came about through the now-abolished discount law. By registering the vehicle to itself, it technically became a used car which the dealer could sell at a significant discount.

For the customer, the car remains a new vehicle. A one-day-registration car may therefore be advertised as a new vehicle and be labelled "brand new" as long as it has not yet been used in road traffic (Federal Supreme Court, [judgement of 12.01.2005 >>](#), ref. VIII ZR 109/04) insofar as the model concerned continues to be built unaltered, the vehicle does not display any defects through being left to stand for a longer period of time and not more than 12 months have elapsed since the vehicle came off the production line (Federal Supreme Court, [judgement of 15.10.2003 >>](#), ref. VIII ZR 227/02). The car dealer should point out the one-day registration to the customer by stating the date of the registration together with the additional fact that the warranty period of the factory guarantee started at the time the vehicle was registered. Such a notice is at least mandatory if a one-year factory guarantee has already been shortened by more than two weeks at the time of the advertising as – according to the Federal Supreme Court – a not inconsiderable part of the warranty period has already elapsed after the expiry of two weeks in the case of a one-year factory guarantee (Federal Supreme Court judgement of 15.07.1999, ref. I ZR 44/97 "EU New Car I" and Federal Supreme Court, judgement of 19.08.1999, ref. I ZR 225/09 "EU New Car II"). Nor is a general reference sufficient, where applicable, that the guarantee has been in effect since the date on which the vehicle was registered (Federal Supreme Court judgement of 15.07.1999, ref. I ZR 44/97 "EU New Car I" and judgement of 19.08.1999, ref. I ZR 225/09 "EU New Car II").

The Federal Supreme Court has not objected to the use of the description "registered for the day / one-day-registration" for a vehicle registered to the car dealer for a period of up to six

days as long as the vehicle has not been used on the road (Federal Supreme Court judgement of 13.01.2000, I ZR 253/97 – “One-day registration II”).

In the case of vehicles registered for the day, the information regarding fuel consumption, CO2 emissions and, where applicable, power consumption, must be given in accordance with the provisions of the Car Energy Consumption Labelling Regulation (Pkw-EnVKV).

Unfair fax advertising

UNFAIR FAX ADVERTISING “WE’LL BUY YOUR CAR...”

Advertising by fax is prohibited under Section 7, Paragraph 2, Clause 3 of the Act Against Unfair Competition unless the party addressed by the advertising has given his/ her express consent beforehand.

This also applies to advertising faxes aimed at buying up used cars (“We’ll buy your car ...”). Faxes like this are normally sent to commercial fax lines, often with the reference that it does not concern advertising because they want to buy cars and not sell them. They even quote court rulings, though these do not confirm the issue. As the subscriber of the fax line is harassed just as much by these commercial requests and inquiries as by advertising material offering goods and services, the Federal Supreme Court has ruled that demand canvassing is also advertising and is therefore only allowed by fax if the person targeted has given his/her consent (cf. Federal Supreme Court, judgement of 17.07.2008 >>, ref. I ZR 197/05 “FC Troschenreuth”). The fact that the addressee’s fax number is in the telephone book or in an industry or other directory or is mentioned in his/ her own advertising is not sufficient for the consent of someone targeted commercially. Only if the fax line to which the advertising fax is sent is retained precisely for the purpose of vehicle demand can it be assumed that the commercial addressee has given his/her consent (cf. Federal Supreme Court, judgement of 17.07.2008 >>, ref. I ZR 75/06 “Royal Cars”). For the advertising faxes sent in relation to buying up used vehicles, this is, as a rule, only the case if the advertising fax is addressed to another car dealer.

Normally, fax advertising aimed at the buying-up of used vehicles can be prevented by a warning from the *Wettbewerbszentrale*.

It is a different situation, however, if the advertiser deliberately conceals its identity. This is the case with the mass circulation of advertising faxes at regular intervals that has been carried out for quite some time now in which, despite the design remaining the same, the “company name” and address of the advertising dealer and, in particular, the fax and telephone contact numbers given change constantly. Frequently, they are just the last few digits of a multiple number account. Although the *Wettbewerbszentrale* has a right to information with regard to the subscriber of the numbers given in an advertising fax being notified to the telephone companies, if the names and addresses notified are fictitious, the warnings issued cannot be delivered. On account of the *Wettbewerbszentrale* not having the investigative powers of a state authority, it only has the possibility, where applicable, of suggesting that the number specifically used be disconnected by the telephone company. The procedure is very time-consuming. As soon as a number is deactivated, the same advertising faxes are sent again a short time later using a different number, often coming from the same block of numbers. Those that do have state investigative powers are, for example, the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railways, which is authorised under the provisions of the Telecommunication Law (Article 67 TKG) to issue instructions in cases of improperly used call numbers, e.g. for the disconnection of an entire number block used improperly. A form for the notification of call number abuse is available on the Internet site of the Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railways.

Common Code for the vehicle trade on the Internet

COMMON CODE FOR THE VEHICLE TRADE ON THE INTERNET

The ADAC (German automobile club), the Centre for Protection against Unfair Competition, the German Motor Vehicle Industry and the AutoScout24 and mobile.de Internet vehicle markets have binding standards of conduct in the form of a code for the vehicle trade on the Internet. Together, they want to help maintain the high quality of the range of vehicles offered on the Internet as well as fair competition among car dealers and effective consumer protection. To

URL of source: <https://www.wettbewerbszentrale.de/de/branchen/Kfz-Branche/ueberblick/>

this end, all of those taking part have undertaken to communicate the rules of conduct agreed on to their customers and members and comply with the same themselves. The common code for the vehicle trade on the Internet is available as a PDF document here¹².

¹² <https://www.wettbewerbszentrale.de/media/getlivedoc.aspx?id=33004>

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