

Full title of law or regulation Act Against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb* – abbrev. UWG) of 3rd July 2004 –Entry into force 8th July 2004. Version published on March 3, 2010.

DE:

http://www.gesetze-im-internet.de/uwg_2004/BJNR141400004.html

Up to date English translation as of September 2017:

https://www.gesetze-im-internet.de/englisch_uwg/englisch_uwg.html#p0035

Translation of key clauses:

http://www.gregsregs.com/downloads/DE_UWG.pdf

Title of relevant section Section 7 Unreasonable harassment/ unacceptable nuisance. These are case examples with regard to Direct Mail's 'unreasonable harassment'

Clauses

1. Unreasonable harassment / unconscionable pestering **cannot** be assumed if, although the envelope is not identified as advertising, the advertising nature is immediately and unmistakably evident after opening the letter (Case: BGH, Ruling: 3.3.2011, Ref: I ZR 167/09, Para. 19 – Credit Card Transfer – DE:

<http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=12288&nr=56528&pos=10&anz=669>

Extract: 'The Appeal Court has accepted that harassment/ nuisance - which is that the sales letter has not already been marked on the envelope as advertising – cannot be qualified as unreasonable/ unacceptable. A corresponding marking would enable the consumer to dispose of the letter unread. The degree of harassment is low in advertising by mail. This harassment can be offset against the interests of the advertising industry in targeted individual advertising and in view of the fact that many people who have been targeted have a legitimate interest in obtaining information through such advertising brochures. This applies in any case if the advertising character is immediately and unmistakably recognizable after opening the letter

2. Confirmed by OLG Cologne, Ruling: 2.12.2009, Ref: 6 U 95/09 – DE:

http://www.justiz.nrw.de/nrwe/olgs/koeln/j2009/6_U_95_09urteil20091002.html

3. Unreasonable harassment/ unconscionable pestering is deemed to exist, on the other hand, if inappropriate instructions or references such as "Delivery notice ... Confidential information" (*Zustellungs-Hinweis ... Vertraulicher Inhalt*), "To be opened personally by the recipient only!" (*Nur vom Empfänger persönlich zu öffnen!*) or "Urgent matter!" (*Eilige Termsache!*) are printed on the envelope of a personally addressed advertising letter (Berlin Court of Appeal, judgement of 19.06.2015, ref. 5 U 7/14, cited in: WRP 2015, 1534)

4. Mail advertising for tombstones sent to relatives of deceased persons is not to be judged as constituting unreasonable harassment / unconscionable pestering if two weeks have elapsed since the death in question (Federal Supreme Court, judgement of 22.04.2010, ref. I ZR 29/09, cited in: WRP 2010, 1502).
