

## **Untrustworthy exhibitor directory offers Expoguide, Construct Data etc.**

Publishers of unofficial exhibitor directories are targeting exhibitors in the run up to trade fairs, offering to provide customers with entries in inferior, sub-standard online directories. However, their terms may stipulate long-term obligations to pay several thousand euros, which are generally hidden in the small print.

AUMA has for some time been advising the exhibitors concerned, who contact us almost daily in matters regarding unofficial exhibitor directories. AUMA has already documented several hundred cases, so that we are well informed as to how the publishers of unofficial directories operate. This information sheet aims to make exhibitors aware of the illicit activities of the publishers of unofficial directories and to provide assistance to the exhibitors concerned.

### **How to recognise offers from untrustworthy publishers**

A letter received from an untrustworthy publisher of an exhibitor directory initially gives the impression of having been sent by a trade fair organizer, or of being an offer to provide a customer with an entry in an exhibitor directory free of charge. The letter will refer to an upcoming trade fair which the exhibitor is due to attend. By including a printed customer number or the trade fair's logo the letter implies that a business relationship already exists. Details of the fees for providing a directory entry will only be found in the small print. In some cases the letter will be accompanied by a form containing basic information on the exhibitor, along with a request to update it. To make it easier to reply, a postage paid envelope will be enclosed which can be used to return the updated and signed form.

Recipients should be cautious if they notice any of the following:

- if details of the fees and the duration of the customer's obligations are mentioned only in the terms and conditions in the small print,
- if a form is provided that already includes certain data,
- if only the publication of a so-called basic directory entry or if only an online registration is free,
- if the company in question is based abroad.

If in doubt you are advised to contact the organizer of the fair.

### **What should I do if I receive an offer for a directory entry?**

Make absolutely sure that you can trust the offer being made. Do not sign a fraudulent offer. Inform your colleagues, in particular in your accounting department, to make staff aware of the situation, and so as to avoid future cases. Send a copy of the form to your chamber of industry and commerce or to the professional association representing your branch of trade. Send the original, if possible bearing a date stamp when received, along with all the enclosed forms to: Deutscher Schutzverband gegen Wirtschaftskriminalität e.V., Landgrafenstraße 24 B, D-61348 Bad Homburg.

### **What should I do if I have signed the form in error?**

It is only after they have received an invoice that exhibitors often realize that they have mistakenly signed an agreement for a directory entry for which fees are due. In such cases it is possible to challenge the agreement, on grounds of error or fraudulent intent. Send a reply using a telefax machine which registers a transmission report, challenging the agreement and making clear that you do not intend to pay the invoice. (See below for a form letter to Expoguide). Keep the telefax transmission report as evidence.

### **What happens if I do not pay?**

The publishers of unofficial exhibitor directories often remain unimpressed by declarations to contest the issue and by a refusal to pay, so that exhibitors must be prepared for a publisher to pursue his claims even after they have challenged the agreement. They will usually then receive further invoices and reminders stating the publisher's legal position. Later on, exhibitors will sometimes be threatened with collection agencies, who are often based abroad, or with legal proceedings ordering payment of debts, or with legal action. In general the purpose of these measures is only to intimidate exhibitors and to prompt them to pay. AUMA is not aware of any cases in which publishers of unofficial exhibitor directories have actually taken legal action against exhibitors. However, if you do receive a court payment

order or if court proceedings are filed against you then you are advised to seek legal assistance.

### **What do I do if I have paid?**

If the agreement is in breach of law or if it can be successfully contested then it may be declared void. This would result in no further obligation to pay fees and would mean that in theory any previous payments could be reclaimed. One should however weigh up the pros and cons of investing time and money to engage lawyers and courts. Often the companies in question are based in a country outside Europe, cease operations, or are bankrupt. Furthermore, the legal situation is not always clear. While there are cases in which the courts have ordered that no further fees be paid, one should note that the actual content of these letters and their offers varies to a large degree, and that any rewording thereof constitutes new facts which must be legally reassessed. Furthermore, where companies are concerned, strict criteria are applied to their examining of the content of the terms and conditions in the small print. At the top of the Expoguide form, for example, it is stated in red that a directory entry will incur fees. It is therefore doubtful whether a court would uphold any appeal claiming this agreement to be void.

### **Form letter issuing a reply, taking Expoguide as an example**

Send your letter using a telefax machine which registers a transmission report.

*Dear Sir,*

*With reference to your letter of... I do not intend to pay the sum you request.*

*No valid agreement between us exists. According to § 134, BGB, the agreement is void as, according to § 3 Section 1, UWG, in conjunction with § 4 No. 3, UWG, you have engaged in unfair competitive practices. In the form enclosed you give the impression that a business relationship between us already exists, and in doing so you conceal the promotional nature of your letter.*

*Furthermore, the clause indicating the fees for providing a customer entry and stating the duration of the agreement is not an effective part of the agreement, as it constitutes a surprise clause as defined in § 305 c, Section 1, BGB. The fact that a directory entry and an online update are free of charge, but that sending an update using the enclosed form and postage paid envelope incurs a fee of several thousand euros constitutes a surprise. The tone of the letter and the enclosed form give the impression that even if one updates information the directory entry remains free of charge. Thus, as a customer I would logically not expect to be charged a fee.*

*By way of precaution I contest the agreement on grounds of error, in accordance with § 119, Section 2, BGB. When I signed your offer to provide an entry in the exhibitor directory I assumed that this entry would incur no fees. One only becomes aware of the actual fees for a directory entry after finding them hidden in the small print.*

*By way of precaution I contend that, in accordance with § 138, BGB, the agreement is void on grounds of usury, as the extent of the services offered is wholly disproportionate to the fees.*

*I shall not reply to any further correspondence from you or from a collection agency representing you. I expressly reserve the right to take legal action against you in this matter.”*

Berlin, October 2010

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