



Beware of directory scams!



What's involved?

Time and again business people enter into contracts for trade directory listings against their wishes. Anyone who skims over forms and signs them without first giving them a thorough reading could be in for a nasty and costly surprise.

How do these scams work?

Unsolicited sales letters

Sales letters for trade directory listings are often sent out as mass mailings in the style of forms on which the company's address is already preprinted. In order to obtain a listing, the recipient is requested to check the accuracy of the address, make any necessary corrections and indicate the products and services offered by the business.

Free and billable services are often presented in such a way as to lead hasty readers to believe that the entire service is free. Readers then sign the form without thinking, which subsequently turns out to be an expensive contract.

The terms of the contract with their undesired consequences are often abstrusely worded and hidden in the small print: By signing and returning the form the reader is concluding a contract which can run for a minimum period of between one and three years. Annual registration fees vary between CHF 800 and 1,700 (EUR 496 and 1054).

Unsolicited telephone calls

Many providers use cold calling to induce unsuspecting business people to enter into a contract. The person is led to believe that there is already an existing contract. In the event that they show no interest in "renewing", the provider asks them to sign and return a faxed form to terminate the contract. Of course, it is precisely by signing and returning the form that a contract with payment obligations is concluded!

Invoices disguised as offers for listings in an industry directory

Dubious providers sometimes send out offers for trade directory listings that resemble invoices. They give recipients the impression that there is already an existing contractual relationship, but the contract is only concluded with payment of the invoice.

Other popular targets with such providers are owners of new brands or businesses. It is no coincidence that these people receive an "invoice" soon after their new brand or business is published in the Swiss Official Gazette of Commerce. The recipients believe they are receiving an invoice from the Institute of Intellectual Property or from the relevant cantonal commercial registry. By paying the dubious invoice they are completing an order instead of paying the amount they believe to be owing.

Agents

Signing a form without reading it during an unsolicited visit by an agent may also yield unpleasant surprises.

Many agents assert that the listing is free. Others pretend they need a signature to update the directory or to confirm that the data is correct. Agents regularly claim that the signature merely confirms that the agent has called on the business. However, anyone who blindly trusts such statements and signs a form runs the risk of concluding a costly contract against their wishes, in some cases spanning several years.

What should you do?

Precautions

Prevention is better than cure! Before signing a form, it is always worth taking the time to read the small print.

Secondly, don't enter into any contracts with agents, whose business card doesn't indicate their personal details alongside the name of the company they are working for! You have the right to know who you are dealing with.



[READ]
before signing!

Training for reception and general administrative staff is a must! In a large number of cases, contracts are finalised inadvertently by such staff.

What should you do, if you find you have concluded a costly contract as a result of having signed a misleading form?

If you feel that you've been misled, you can proceed as follows: Do not pay the bill and contest the contract immediately with a registered letter. Under Swiss law a declaration of rescission must be made within a year of the mistake having been discovered. If there is a fundamental error, the contract is rendered null and void. One letter is enough. You can disregard any subsequent correspondence from the provider. The letter must contain at least the following information:

"I was misled by your form and I am therefore rescinding the contract on the grounds of error. The contract is therefore null and void".

It should, however, be noted that only the competent court, in considering all the relevant facts, may decide whether there are significant grounds for error, and consequently whether the contract is rendered null and void. The matter is only brought before a court if one party chooses to take legal action.

Important: If you are pursued for non-payment, you must submit a formal objection within ten days! The best thing to do is immediately lodge a formal objection with the debt collection authorities.

How should you deal with these directory scams?

Persons in Switzerland

Anyone who finds themselves the victim of a directory scam can file a criminal complaint for misleading advertising at the police station nearest to their business premises. It is then up to the police to refer the matter to the relevant prosecuting authorities. In addition to a statement describing the facts of the matter and corresponding proof (signed form and any correspondence with the publisher of the industry directory), the complaint should also include the following concluding sentence:

"For all of the abovementioned reasons, I request that criminal proceedings be instituted against XY due to contravention of Art. 3b of the Unfair Competition Act (UWG, SR 241) and that XY be punished accordingly".

In addition, it is also possible to file a civil suit for unfair competition at a court with jurisdiction over the person's business location. A civil suit can also include claims for compensation and damages.

Persons living abroad

Persons living outside Switzerland whose economic interests are affected by a scam can file a complaint with the State Secretariat for Economic Affairs (SECO) (see address below). If several persons are affected by the same scam, SECO can file a criminal or civil complaint with a view to seeking an appropriate verdict against the perpetrator of the dubious practices in question. However, SECO is unable to recover money that has already been paid.

Where can you obtain further information on directory scams and on misleading business practices?

At federal level it is primarily the State Secretariat for Economic Affairs (SECO) that deals with directory scams. If you have any further questions, please contact us by email. Please note, however, that only the competent court is in a position to decide whether there is sufficient evidence of unfair competition.

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