

# Directory fraud

*Many disreputable companies are using Commercial Register and directory entries to simulate business relationships for racketeering purposes. The commercial damage caused to businesses by the unintentional conclusion of contracts is immense. In 2020, the potential annual loss is estimated at 376 million euros.*

This leaflet is a service offer of the Chamber of Commerce and Industry of Berlin (CCI Berlin). It contains preliminary legal pointers and makes no claim to completeness or correctness.

## "Directory fraud"

For some years now, the number of bogus directory providers sending out offers in the form of invoices for listings in company databases and industry registers has been steadily increasing. Some offers are presented in such a way that inattentive readers think they are invoices for orders already placed. Others do not make it clear that listings are subject to charge, although such entries are usually free of charge online.

Increasingly, providers are giving the impression that the invoice has been sent by a public body, due to publication being a statutory requirement. The preferred targets for such companies are business start-ups and young companies whose addresses have just been published in the Commercial Register. Analysis of the data published in the Commercial Register is permitted. The Federal Gazette expressly draws the attention of its advertisers to this fact in a notice, but at the same time emphasises that it has no connection whatsoever with the offers made by bogus directory providers.

Another method used by bogus directory providers is to use forms in which advertising texts from advertisements published elsewhere by the companies contacted are included. Companies immediately recognise their own advertisements and may not notice that by signing they are not only confirming the accuracy of the advertisement text (e.g. proofing it for republication), but also signing a new advertising contract with a completely different company.

The commercial damage caused to businesses by the unintentional conclusion of contracts is immense. In 2020, the potential annual loss is estimated at 376 million euros. If the directories appear at all, they are usually worthless, since the entries are made, for example, without categorisation according to industry or company headquarters.

## How can you recognise the promotional letters sent out by bogus advertising providers?

Bogus promotional letters are above all characterised by the following:

- The promotional letter is similar in appearance to an invoice, and in most cases has an already completed remittance slip attached to it.
- Customer or registration numbers give the impression of an already existing business relationship.
- The type of paper used is the type normally used by authorities.
- Logos or designations similar to those of authorities or semi-official bodies are used.
- Only the small print of the terms and conditions, hidden at the edge or even on the reverse, indicate that this is a fee-based offer.
- Glued excerpts from Commercial Register publications from the Federal Gazette are used.
- Questionnaires are sent out for the allegedly free-of-charge inclusion of company data in a database. However, only publication of the master data (company name, address) is free of charge.
- So-called company-foundation certificates are sent out.
- The listings offers are often sent by fax. (Note: Unsolicited fax advertising is anti-competitive).
- Forms include texts from advertisements published by the companies elsewhere. By confirming with their signature that the text of the alleged proof is correct, companies are in fact placing an advertisement order.

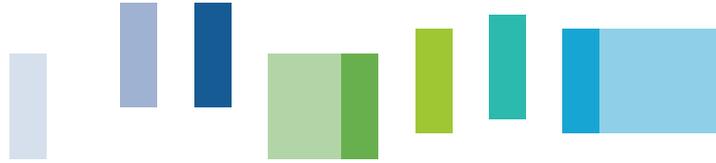
As the examples show, the advertising methods deliberately target weak points in the internal organisation. Those sending the forms anticipate payments being authorised without closer scrutiny, as the targeted companies are expecting an invoice for their Commercial Register entry.

## How to react

The CCI Berlin advises against responding to these offers. You should therefore warn your employees about these disreputable providers, especially those who process incoming mail and who work in accounting.

It is particularly important to check carefully whether a corresponding order has been placed or whether the service offered is one the company really wants to use.

The CCI Berlin has for many years been trying to protect companies from bogus directory providers. The CCI Berlin has for a long time been working with the German Protection Association against White-Collar Crime (DSW) and the Association of German Chambers of Industry and Commerce (DIHK). Complaints received by the CCI Berlin are forwarded to the DIHK and the DSW. The DSW requires disreputable companies to submit a cease-and-desist declaration with a penalty clause and, where necessary, initiates legal proceedings. Under certain circumstances, criminal charges may also be filed.



## What should you do if you have already signed a contract?

### Rescission

It is almost always advisable to rescind the contract in writing due to fraudulent deception in accordance with section 123 of the German Civil Code (time limit for rescission: 1 year). Rescission does not eliminate the risk of the user being sued for payment. In court, however, the defendant has a stronger case if they have rescinded the contract. If a contract had been concluded at all, it would be retroactively eliminated by a valid rescission. This requires the court to affirm the sender's intention to deceive.

A suggested wording for a declaration of rescission can be found below. According to case law, for an effective rescission it is important to specify the ground for rescission.

### Ineffective fee clause according to Federal Supreme Court case law

On 26.7.2012, the Federal Supreme Court decided that a fee clause hidden in the small print of an online directory entry form can be "surprising" within the meaning of Section 305 c of the German Civil Code (BGB) and then not become part of the contract. (FSC ruling dated 26.7.2012 - VII ZR 262/11) The payment action brought by the directory was therefore dismissed. A reference to this current supreme court case law pronouncement is indispensable.

### Cancel as a precaution

Notice of termination of the contractual relationship should also be given as a precautionary measure in order to prevent the sending of any follow-up invoices for a multiple order which may have been issued by signing the order form or the further extension of the contract.

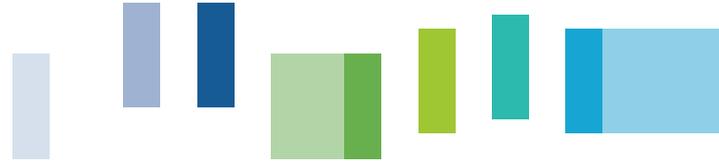
## What should you do if you've already paid?

Anyone who has made a payment in the false belief of an existing liability on the basis of one of the order forms designed to resemble an invoice should immediately stop any transfer instructions that have not yet been executed by its bank. They should also draw the attention of the beneficiary's bank to their error. If they are unable to recover their money in this way, the amount should be claimed back using legal means if necessary.

## Suggested wording for a declaration of rescission

"Dear Sir/Madam,

I hereby rescind my declaration dated ... on the grounds of fraudulent misrepresentation pursuant to section 123 of the German Civil Code (BGB).



[If applicable: I paid you the amount of € .... since I was under the impression that I owed you this money. I hereby rescind any declaration of intent thereby possibly implied on the grounds of fraudulent misrepresentation pursuant to section 123 of the German Civil Code (BGB).]

With your form dated ... you fraudulently and deceitfully gave me the impression that this was .../ that I was obliged to ...

[If applicable: ... an invoice with a payment obligation and not merely an offer. The nature of the offer was not easily recognisable. The reference to the cost obligation was so embedded in the remainder of the text that the reader was clearly meant to overlook the crucial part detailing the costs].

I hereby request that you refrain from taking any further action which is intended to induce me to make unauthorised payments. / [If applicable: I call upon you to reimburse the payments I have made immediately, at the latest by ... to my account .... I hereby by way of precaution terminate the contract at the earliest possible opportunity.] I expressly reserve the right to take legal action.

Yours faithfully ..."

## Criminal aspects

Many cases of directory fraud are criminal offences. The offences in question are usually either attempted fraud or, if payment has already been made, fraud, section 263 of the German Penal Code (StGB). For example, on 21.03.2014, the district court of Saarbrücken convicted the operator of a bogus directory for fraud. It had issued invoices that resembled those issued by state authorities, so that the injured parties paid the invoice amount on the assumption that it had been issued on account of a recent entry or amendment in the Commercial Register.

The offence can also be criminal advertising, section 16 of the German Fair Trade Practices Act (UWG).

In these cases, you can file a criminal complaint with the police or the public prosecutor's office. This can now also be done online, in Berlin at: <https://online-straftanzeige.de/berlin>

*Note: This leaflet has been prepared with the greatest possible care. Nevertheless, no liability can be assumed for the correctness and completeness of its content.*