



HRC Hamm: Vouchers as unfair competition - Competition law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - www.grprainer.com/en conclude: This kind of advertising constitutes unfair competition, according to the Higher Regional Court (HRC) of Hamm in its judgment of November 12, 2013 (Az.: 4 U 31/13). The HRC stated that this kind of vouchers would mislead the customer into breaching his contract with his insurer.

The defendant here offers, among other things, to repair motor vehicles. In its advertising, it promised in return for granting the job to replace a glass pane in a vehicle a voucher for the next job. The plaintiff considered this advertisement of the business to constitute unfair competition and the Regional Court (RC) of Essen found in his favour. It prohibited the business from advertising with vouchers for follow-up jobs in the form of a reduction of the deductible amount. The comprehensive collision insurer concerned refused to provide the necessary approval for this.

The defendant subsequently lodged an appeal against the judgment of the RC Essen, however this was dismissed by the HRC. It stated that the advertising was anti-competitive, as the interests of the comprehensive collision insurer were not observed here. While advertising with price discounts was in principle allowed, this kind of advertising is subject to checks against abuse if the interests of a third party must still be observed by the customer. Here, in the event of collision damage, there is at any rate a third party interest worthy of protection, namely the comprehensive collision insurer's interest in minimising damage by the customer and accurate information regarding the costs of repair.

The HRC went on to state that the objectivity of the customer in reaching his decision, which the insurance contract requires of the customer, is impaired by this kind of advertising statements. In general, there are no economic benefits for insurance customers in contracting a cheap garage. The situation is different if the "voucher?" is not disclosed to the insurer. According to the HRC, there is the risk from the garage's offer that the insured party tasks the defendant in order to obtain the benefit and breaches his duties arising from the insurance contract. Common sense also supports this.

Competition violations can have far-reaching consequences for businesses. For this reason, one should enlist the help of a lawyer active in the field of competition law, if possible before advertising measures or other actions which interfere with competition are carried out.

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Anlage: Bild

