



## **Anti-competitive violation when disparaging a competitor - Competition law**

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Bremen, Dusseldorf, Essen, Frankfurt, Hamburg, Hanover, Munich, Nuremberg, Stuttgart and London [www.grprainer.com/en](http://www.grprainer.com/en) conclude: In the instant case, an employee of a company contacted employees of a competitor via a social network for work-related contact. In the process, he expressed himself in a way that in the eyes of the competing company these statements could be categorised as derisive. Moreover, attempts were made to entice the employees away. The courts then had to deal with the question of whether this constituted an anti-competitive violation. While the District Court of Heidelberg answered this in the negative, the Regional Court (LG) of Heidelberg found in favour of the competitor (Az.: 1 S 58/11).

The selected statements could absolutely be construed as disparaging vis-à-vis the competitor, according to the judges' view. It was particularly stressed that the very negative depiction of its qualities as a company and also as an employer had no objective basis. This constituted disproportionate encroachment of the legitimate interest in a reasonable public image. The LG therefore acted on the assumption of an anti-competitive violation within the meaning of the Act against Unfair Competition (UWG).

The LG also dealt with the accusations of unfair headhunting. Thus, there was also a violation in this context of the UWG, since the company aimed at impeding the competitor by means of unfair headhunting. The crucial factor in distinguishing between permissible and impermissible headhunting is, in particular, the surrounding circumstances. Here, the headhunting was accompanied by a disparaging statement vis-à-vis the competitor, which is why it was unfair.

One normally only associates unfair competition and violations of the UWG with measures which are in direct connection with operational business. Advertising measures are therefore often criticised by competitors or consumer advocacy groups, yet remarks about employees of a competing company or headhunting attempts can also stand in the way of lawful competition.

Violations of the UWG can have far-reaching consequences for businesses concerned. Competitors can assert injunctive, compensatory or restitution claims against the profits gained. In the event of infringements on your part or an unfair course of action on the part of a competing company, one should turn to a lawyer active in the field of competition law. He can help you enforce claims or fend off accusations from competitors.

<http://www.grprainer.com/en/Unfair-Competition.html>

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Anlage: Bild

