



## **An informative website does not constitute anti-competitive sales promotion - 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](http://www.grprainer.com/en) conclude: In a current decision (File number: 6 U 220/12), the Superior Court (OLG) of Cologne had to rule how providing information about alternative treatment methods on a website had to be classified. The case involved an operator of a website which provided detailed information about an unconventional treatment method. In addition, the website included a link leading to an online shop that sells products for this treatment method. Another company saw this as anti-competitive promotion of the products and filed an action seeking a cease and desist order.

The Regional Court (LG) had found the action inadmissible due to misapplication of the law. The plaintiff filed an appeal with the OLG in Cologne. But that did not lead to success either. While the OLG found the action to be admissible, it did not agree on a cease and desist order. The court explained that such an order could only be justified in case of a business transaction as defined in the Unfair Competition Act (UWG). To assume a business transaction, there would have to be an objective connection between a person's favouring conduct and sales promotion of products.

In this particular case, the OLG did not believe that those conditions were met. The court explained that it is not significant whether the conduct actually affects the decision of consumers, but whether that has also been the primary purpose of the action. There was no indication that the defendant profited financially from the sale of the products. The website statements exclusively served the purpose of informing about the treatment method. The mere placement of a link could not be taken as deliberate sales promotion. Furthermore, the website had also pointed to pharmacies in general as vendors of the products.

Purpose of the UWG is to protect free competition and to protect companies against detrimental activities by competitors. A violation of the UWG can justify a cease and desist order but can also lead to compensation and surrender claims. To ensure that companies do not violate the Unfair Competition Act, they should seek the advice of a lawyer with experience in competition law. By examining an individual case, he can evaluate the situation exactly and if necessary take the required legal action.

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

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Anlage: Bild

