

An annoying phenomenon on the German web: Online Subscription Traps

Since several years, there is one subject that particularly affects German consumers and internet users: online subscription traps. Sometimes, also consumers from other countries get trapped by those websites; hence this leaflet is now available for you in English.

Consumers register on websites to get specific services, like having a route planned or sending sms for free. As such a service is often provided for free on the internet, consumers frequently “order” it from the given websites without having a more careful look in order to detect rather hidden price information. Often, words like “free”, “costless” etc. lead the wrong way, because they only refer to a restricted service. Taking profit from that situation, the price indication is actually kept unclear and the consumers have to sign in for 12 to 24 months.

Although this has been a problem for a long time, with the media frequently revising the topic and judgements being won by the Verbraucherzentrale Bundesverband (Federation of German Consumer Organisations), the Wettbewerbszentrale (Centre of Protection against Unfair Competition) and others, consumers are still frequently faced with those traps – and are taken in by them in still too many cases.

The question is: **Is there a lawful claim for the fee?**

Some websites undoubtedly swindle when it comes to their obligation to display costs, others – even trickier – show traders which are quite reluctant to clearly quote the costs, and so the indications are veiled: like at the very bottom so it is necessary to scroll down a lot or in the middle of a longer text in small font or even just in the General Terms and Conditions.

Depending on the website’s layout and tricks, the following questions might come up:

Is there actually an effective contract?

A contract is only effective if an agreement is reached: the offer (e.g. offering the service of route planning for 100 € per year) has to be met with a "mirror image" acceptance (e.g. getting the service of route planning knowing that it costs 100 € per year). If the price indication is not clear, many judges therefore tend to say (in those online subscription cases) that no agreement had been reached. As a result, the contract is void and the claim ill-founded.

If nevertheless the contract could be considered as effective: ***Is it possible to withdraw from it according to distance selling regulations?***

In Germany, on the 4th of August, a new article of the German Civil Code came into force. Before, the right of withdrawal often became extinct if a service had once been used. Now, that can only be the case if the consumer expresses his explicit consent and is informed about the consequences before. If you have more detailed questions, please do not hesitate to contact the eCommerce-Contact-Point Germany for further explanation.

If the contract could be considered as effective and a withdrawal is not possible:
Is it possible to rescind the contract by contestation? Or might that kind of contract be ineffective for minors? Are parents subjected to liability?

Generally, if a minor is subject of the claim, in all likelihood, a long term subscription contract can be considered as void for that reason. The other questions needing a closer look by an expert's eye, please feel free to contact the eCommerce-Contact-Point Germany on that purpose.

As you can see, very often there is no contract or at least its effectiveness can be revoked. Generally, the trader's claim can be attacked in case of online subscription traps.

All the same, those traders instruct dubious debt collectors and lawyers to invoke the pretended claim for them, threatening the consumers with also penal consequences. Therefore, and because most of the pretensions are legally ill-founded, it is vital to inform the consumers on a criminal-law-basis as well as on a civil-law-basis of how to face this intimidation policy. Being charged and getting a criminal record can lead many people to pay offhand. But generally, the threat is totally unfounded.

Please don't hesitate to contact the eCommerce-Contact-Point Germany in case of any doubt.

Linked problem:

Evidence by IP-address?

Consumers often asserted that they have not ever visited the website and that therefore they could not have registered themselves. As counterevidence, the dubious traders pointed out that personal data can only be obtained through registration and that the consumer's IP-address has been saved. However, the reference to the IP-address does not have a probative value before court. It can merely show that someone has visited a specific website at a specific time; but this is still no evidence of the conclusion of a contract.

The personal data mentioned could have been cached somewhere else, e.g. on a website that the person concerned has actually visited and where he has indeed registered himself/herself to a free service or likewise.

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