

主旨:有關奧地利 Construct Data Pulischers Verlag (簡稱 CDV) 公司為我商代登廣告並發生索費糾紛案，詳如說明，請 鈞察，並請轉送我國相關公會提醒廠商注意防範。

說明：

- 一、 相關文號：鈞局 94 年 2 月 5 日貿展字第 09490004650 號函、本組 94 年 1 月 27 日奧經字第 09403000150 號函、94 年 1 月 24 日奧經字第 09403000120 號函、鈞局 93 年 8 月 12 日貿展字第 09300088170 號函、本組 93 年 7 月 19 日奧經字第 09301001200 號函。
- 二、 有關 CDV 公司利用廠商參展之際，提供刊登參展廠商名錄英文表格供廠商填寫，簽字後發生索費糾紛事，該公司另透過設籍瑞士的 Premium Recovery 公司利用各種方式向簽字廠商索款，並聲稱將採取法律途徑控告等。邇來仍有我國廠商向本組反應發生類似案件，希望本組洽國內單位就本案多加宣導，以利廠商瞭解及應對，本組爰再洽請奧地利聯邦商工總會所屬之「反不公平競爭協會」提供建議供參。
- 三、 「反不公平競爭協會」答覆告稱，該協會認為 CDV 的作法涉屬誤導客戶之行爲，並建議我商發生簽約索費糾紛時，應立即去函通知 CDV 解約，且不需再回應 CDV 之催款騷擾，亦不要付款，因為迄今未曾有任何公司因上述情事而被 CDV 提出告訴之實際案例。另由於與 CDV 發生糾紛的公司均為外國廠商（非奧地利商），該協會無法代表外國廠商在奧國法庭提出告訴等語。檢附該協會來函影本及提供回拒 CDV 索款的樣本信函各一份，供我國廠商參考運用。

----- Original Message -----

From: Seidelberger, H. (WK-Schutzverband)
To: Economic Division Taipei
Sent: Tuesday, May 16, 2006 2:39 PM
Subject: AW: ueber Construct Data Verlag (CDV)

Sehr geehrte Damen und Herren,

unsere unverbindliche Empfehlung lautet: Mit dem beiliegendem Schreiben den Ruecktritt erklaren und falls dies schon geschehen ist, nicht weiter reagieren und auch nicht zahlen, weil offensichtlich nie eingeklagt wird

Mit freundlichen Gruessen

Hannes Seidelberger

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**Specimen letter regarding Construct Data
Verlag AG to affected companies**

The Austrian publishing company Construct Data Verlag GmbH, which operates internationally, is sending out advertising communications virtually worldwide for entry in an online fair exhibitors' directory bearing the name "Fair Guide". Because the timing of this communication is close to that of the respective fair date, and due also to the presentation, recipients often gain the false impression that, even when signed and submitted, this is a free entry and/or entry / update for the official exhibitors' directory of the respective fair organization, although completing the entry is in fact subject to a charge, and entry has nothing directly to do with the fair mentioned or its organizer.

In our view, such misleading advertising communications must be viewed as inadmissible in particular on the basis of the strict judicial precedent of the Supreme Court. Construct Data apparently targets these offers primarily abroad, and there too always seeks to collect payment whenever a form is signed in error. Due to the large number of complaints and thus prejudice to Austrian competitors, as well as the reputation of the entire Austrian business community, and damage to Austrian companies with foreign establishments, the Schutzverband (Austrian Association against Unfair Competition) has instituted proceedings for an injunction against these communications – which we consider to be misleading - and the profits therefrom, i.e. a prohibition on the collection of payments.

This intervention in a matter of unfair competition is initially restricted to the European Union and Switzerland, because here the legal position is largely identical, in particular due to the Directive relating to misleading advertising. If the outcome of these proceedings is successful, they will be extended to other countries.

The action has been dismissed in the proceedings of first instance on the grounds that the Schutzverband, due to the fact that communications were not sent to businesses in Austria, does not have a right of action, although, as stated above, we do indeed perceive prejudice as regards our members and shall file an appeal. In no manner, however, was the content of the communications assessed or approved; the decision was purely one relating to formal requirements.

In any event, intervention by the Schutzverband cannot replace challenging of claims under civil law by those businesses which have signed up to the directory. With regard to those companies which have been misled, we would therefore recommend that legal advice be sought; in our view error can be asserted. In our experience it is the case that, following contestation of a claim, apparently in no case has legal action been taken by Construct Data.

Enclosed: Cancellation letter

Construct Data Verlag AG
Management

By fax: +43-1/90 208-40

Dear Sir/Madam

Re: Your invoice/reminder dated

With reference to your letter dated, in which you request payment of the sum of EUR, we would respond as follows.

On, in error we signed your communication regarding a "Fair Guide", since you had given rise to the inaccurate impression that this entry was free of charge / an update for the official exhibitors' index of the said trade fair. Since the error was caused by you and was material in leading to conclusion of the contract, we contest the contract – in so far as a contract indeed even came into being, which we would also dispute – on the basis of error, in particular pursuant to Austrian law (Section 871 ABGB).

For the sake of good order, we would also point out that the clause according to which the contract is concluded for three years / automatically extended is also invalid in particular pursuant to Austrian law (Section 864a ABGB). This is most certainly an unexpected clause which would not be anticipated according to the external appearance of the document.

Finally, we have been informed that, besides numerous other actions and court orders against you, the Austrian *Schutzverband gegen unlauteren Wettbewerb* is conducting a comprehensive set of proceedings against your company with the aim of obtaining an injunction preventing you from despatching these misleading communications and deriving the benefits therefrom, i.e. a prohibition on collection of the amounts concerned.

We do not therefore see any reason to settle the amount requested by you.

Yours faithfully