



Press Release

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Federal Network Agency imposes fines of EUR 500,000 for unlawful telephone advertising

Kurth: “We will not tolerate the law being broken by nuisance advertising”

The Federal Network Agency has imposed fines in six legal proceedings involving unlawful telephone advertising. In December 2009 and January 2010, fines of up to EUR 500,000 were imposed in a total of nine legal proceedings. This is the first time the Federal Network Agency has actually imposed fines for failure to observe the ban on telephone advertising and the obligation to display the caller's telephone number.

Since the amendments to the Act against Restraints of Competition and the Telecommunications Act entered into force on 4 August 2009, making unsolicited telephone calls for advertising purposes and suppressing the calling party's number have constituted administrative offences. The fines have been imposed on the parties commissioning the unsolicited calls as well as on the call centres actually making these calls. In one other case involving civil penalties, the case was suspended owing to a lack of evidence.

“Some companies' blatant failure to observe the statutory ban on unlawful telephone advertising which has been in place for quite some time now is totally unacceptable. The regulations governing telephone advertising apply without restriction”, says Matthias Kurth, President of the Federal Network Agency. “It cannot be tolerated that companies gain a competitive edge by disturbing consumers. By imposing these fines, we are sending out a very clear message that we are not willing to tolerate breaches of the law. It is precisely the companies commissioning these telephone calls that have an even greater responsibility to observe statutory obligations.”

Fines imposed for unlawful telephone advertising

In the specific cases at hand, telephone calls were made unlawfully as part of an advertising campaign without the consumers' explicit prior consent to receiving telemarketing calls; some companies had commissioned call centres to make the calls for advertising purposes. These calls were made to advertise a wide range of services and products from the telecommunications and media industry as well as lottery scoops.



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“Parties commissioning telephone advertising, too, mustn’t act outside the realm of the law. They are acting unlawfully when they commission third parties to carry out telemarketing campaigns without having the necessary explicit and effective consent of consumers to receiving telephone calls for advertising purposes”, Mr. Kurth stresses. “I urge all advertisers – both the companies commissioning telephone calls and the call centres making these telephone calls – to observe the statutory regulations. No excuses will be tolerated.”

Under the Act against Restraints of Competition, failure to observe the ban on unlawful telephone advertising may be subject to fines of up to EUR 50,000. The fine notices were preceded by lengthy investigative work. “We thank all consumers who contacted the Federal Network Agency with well-explained complaints and pieces of information”, Mr. Kurth stresses. “The Federal Network Agency received over 28,000 complaints about unlawful telephone advertising between July and December 2009 alone. A large number of investigations are still underway.”

Fines imposed for failure to observe the ban on suppressing caller identification

Suppressing identification of the calling party of advertising calls is also subject to fines. In this context, fines were imposed for calls made which suppressed the telephone number of the call centre making the calls and for the companies making the advertising calls displaying a call number that had not been assigned to them. It conceals the identity of the calling party to display the wrong number and to suppress the identification of the calling number. The Federal Network Agency can impose fines of up to EUR 10,000 for advertising calls made that suppress the caller identification.

Pre-recorded telephone announcements not subject to fines

In cases involving so-called ping calls where a call is made and broken off after just one ring, and pre-recorded telephone announcements, it is not possible, even under the new laws, to impose fines of up to EUR 50,000 for unlawful telephone advertising. “However, in these cases, the Federal Network Agency can implement a large number of administrative measures under the Telecommunications Act, for instance, it can disconnect telephone numbers and impose bans on billing and collection for any telephone numbers that are being used illegally“, Mr. Kurth says.



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Detailed complaints

The Federal Network Agency can only intervene in unlawful telephone advertising if it has received detailed and plausible reports of breaches of the law. Unclear complaints as well as incoherent lists of calls without comment or vague information about calls received frequently lead to nothing. As it is the rights of consumers that are being violated with these telephone calls, the Federal Network Agency depends on obtaining detailed information from the consumers who have received these calls. This information should include exact information about the date and time the call was made and, if applicable, the call number displayed. It is also helpful for the investigative work if consumers can provide the actual name of the calling party, the products and services advertised as well as information about the company making the call and advertising the products and services. As persons filing the complaints may also be required to attend hearings as a witness, the Federal Network Agency also needs their full address details.

“Consumers can also take precautions themselves by being both economical and careful in handling their personal data in day-to-day life. This applies in particular to being most selective about who they give their telephone number to”, Mr. Kurth explains.