



MARKTWÄCHTER  
DIGITALE WELT

# HOW THE RIGHT TO WITHDRAWAL WORKS IN PRACTICE: A CONSUMER PERSPECTIVE

Case studies from the Early Warning Network<sup>1</sup> of the ‘Market Watch Digital World’



The right to withdrawal has been a recurring theme for advisors at the German consumer associations for a number of years. These practical problems are also reflected in the increasing number of complaints lodged by consumers in the Early Warning Network of Digital World Market Watch (and hence in the German Consumer Association), and via the complaints form on the Market Watch website [www.marktwaechter.de](http://www.marktwaechter.de).

The following selection of consumer complaints provides a rough overview of the areas where consumers are having problems in exercising their right to withdrawal from contracts from off-premises sales. The complaints highlight the means used by companies to create the impression of wanting to make it harder for consumers to withdraw from contracts or to prevent them from doing so altogether. Tricks range from claiming that a product is a bespoke one-off version, meaning that there is no right to withdrawal, to demanding large amounts of compensation for diminished value, and even to threatening consumers.

The following complaints are cases reported by consumers to the Early Warning Network in a total of six German states between 2017 and 2018.

## Selection of consumer complaints about the right to withdrawal

### ...❖ EXERCISING THE RIGHT TO WITHDRAWAL IS MADE DIFFICULT OR SEEMINGLY IMPOSSIBLE

- After ordering and paying for a mobile phone, a consumer withdraws from the contract within the period allowed, but the phone is still sent to him three weeks later. On top of that, the consumer is supposed to pay taxes and customs charges for the return in advance.

- Instead of the phone he has ordered and paid for, the consumer receives a pre-owned and damaged device, sent to him from an address in Germany. Returns have to be sent to an address in Thailand. When the consumer complains and asks for his money back, the seller responds with threats.
- Withdrawal by the consumer (change to the service as part of an ongoing business relationship) is ignored.
- An attempt to withdraw from a contract for a dress that didn't fit is rejected and the consumer is asked to send photos. She is only offered a voucher, not a reimbursement.

### ...❖ EXCLUSION OF THE RIGHT TO WITHDRAWAL ON THE GROUNDS OF (ALLEGED) CUSTOMISATION

- A wedding dress is ordered and paid for in advance (500.00 euros). The right to withdrawal is rejected on the grounds that the dress is made to measure (personalised choice of size and colour). At the time the purchase was made, the customer could choose between one colour and off-the-peg sizes 36–42.
- The cancellation of a contract of sale for posters that were offered with or without frames was rejected on the grounds that the product was custom made.

<sup>1</sup> The Early Warning Network (EWN) is a system for documenting and analysing significant cases arising in the German Consumer Advice centres. Advisors provide detailed descriptions of the facts, on the basis of which cases are categorised and subjected to qualitative analysis. It is, however, not possible to quantify the data from the EWN or make deductions as to the frequency of such cases in Consumer Advice Centres overall.



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## ❖ NON-TRANSPARENT AND EXCESSIVELY HIGH CLAIMS FOR COMPENSATION

- A trader demands a compensation of 50 percent of the value when shoes are returned, claiming they are marked, and sends photos. The consumer has only tried the shoes on.
- A consumer concludes a contract with an online dating platform for 12 months for a total amount of 388.70 euros. After just six days, the consumer withdraws from the contract. The provider demands compensation totalling 291.53 euros, a disproportionately high sum that is not clearly explained.

## ❖ THREATS

- The consumer withdraws from the contract in good time and returns the goods. The seller does not respond immediately to the consumer's request to withdraw from the contract so the consumer writes a negative review on an online review platform. The seller then puts pressure on the consumer and refuses to refund the payment until the consumer has deleted the negative online review. Details here: <https://ssl.marktwaechter.de/pressemeldung/klares-foulspiel-nach-kauf-von-fussball-fanartikeln>
- A consumer cancels the contract for a mobile phone and writes a negative review on a rating site because the device was not new, as contractually agreed, and the seller refused to take the phone back. The seller then attempts to intimidate the consumer, but agrees to send a new device on condition that the negative review is deleted. When the consumer still refuses, the trader instructs a lawyer to claim the purchase price – which had already been paid – again.

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