

17. May 2016

WHATSAPP MUST PROVIDE TERMS AND CONDITIONS IN GERMAN

vzbv wins lawsuit before the Berlin Kammergericht (Superior Court of Justice)

- WhatsApp provides its terms of use and its privacy policy in English only.
- The clauses are barely comprehensible to most consumers in Germany.
- All the clauses are legally void in the absence of a translation into German.

The Berlin Kammergericht (Superior Court of Justice) has ruled against WhatsApp in a lawsuit brought by the Federation of German Consumer Organisations (vzbv) and banned the messenger service, based in California, from posting its General Terms and Conditions (GTC) in English only on its German website. vzbv had complained about the fact that the Terms of Use, which are several pages long and contain technical legal language, are largely incomprehensible to consumers in Germany.

“Companies’ terms and conditions are frequently lengthy and generally hard to understand for consumers . It is an important message to other international companies that the millions of German users of WhatsApp will not have to contend themselves with terms of use in a foreign language,” says Klaus Müller, Executive Director of vzbv.

Complex set of rules only available in English

WhatsApp, which was taken over by Facebook in 2014, advertises its messenger service to customers on its German language website. Anyone wishing to use the service must first register and agree to the terms of use and the privacy policy. However, they are available in English only.

The court shared vzbv’s view that such a practice puts an unreasonable burden on consumers. It found that everyday English is widespread in Germany but not the type of English used in legal texts, contracts and commercial documents. The court noted that no customer should have to face “an extensive, complex set of rules with a very large number of clauses” in a foreign language. It found that, in the absence

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of a German translation, all the clauses lack transparency and are therefore legally void. When the judgment becomes applicable, WhatsApp will have to make its terms of use and privacy policy available in German.

Failure to provide a second means to contact WhatsApp

The judges also found that the company was in violation of the German Telemedia Act according to which providers must provide a second means of fast and direct contact in addition to an email address, such as a contact form or a telephone number where the company can be reached. WhatsApp had failed to provide such a second means of contact. Instead, the company had linked to its Facebook and Twitter pages. However, users cannot send messages to the company via Twitter and WhatsApp had set up its Facebook profile in such a way that messages could not be sent either.

The court however did not agree with vzbv's view that an authorised representative of the company should be named in WhatsApp's legal notice. The court ruled that, in accordance with European law, only the name and address of the service provider need to be provided.

No appeal allowed

The Superior Court of Justice has not allowed the judgment to be appealed. WhatsApp can, however, contest this and file an application for leave to appeal with the German Federal Court of Justice.

Judgment of the Berlin Kammergericht (Superior Court of Justice) of 08.04.2016, case no. 5 U 156/14 – not final