

E-COMMERCE LEGAL ASPECTS IN GERMANY



THE LEGAL NOTICE, WHO ARE YOU?

If a product is purchased, a binding contract is concluded. The consumer undertakes to pay the purchase price and receives the product in return. An important factor in the decision-making process for Germans is which seller you are dealing with.

The identity of the counterpart can be very revealing: the information on identity enables the consumer to assess

the company's reputation regarding the quality and reliability of the goods or services it offers, but also its economic potential, creditworthiness and liability.

Because these facts are very important for the customer, German law provides for a duty for entrepreneurs: **they must not conceal their identity, i.e. they must indicate their legal form, their name and full address.**

The legal notice must be easily recognizable, directly accessible and permanently available. The courts have defined exactly which requirements are to be met by the legal notice, **for example it must be accessible from every shop page with a maximum of two clicks.**

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ADVERTISING IN GERMANY



Advertising is a key point: many retailers rely on e-mail advertising, especially in the area of online shopping. Classic postbox advertising has almost had its day. But even if it is tempting: simply sending advertising by e-mail to any person is not possible in Germany. The reason for this is a provision in the Unfair Competition Act (UWG).

The aim of the scheme is to protect individuals from harassment by advertising. Since advertising by e-mail is cheap and fast, this is particularly strictly regulated.

That's not the same case with the postbox: since it is not so easy to spam this way, the entrepreneur can do more here.

However, the entrepreneur **may only send advertising by e-mail if the customer has given his prior permission to do so.** Without the permission granted, the first e-mail is considered harassment and **can have legal consequences. In exceptional cases, advertising may also be sent without a declaration of consent: this is the so-called acquisition of existing customers.** However, this is subject to strict conditions, which the retailer must adhere to.

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WARRANTY

In addition to the right of withdrawal, which is harmonized in the European Union, German law also provides for a warranty.

Warranty is another word for liability for defects and means that the retailer must take responsibility for if the goods are defective – **usually for a period of two years after the purchase of the product**. A defect shall always be deemed to exist if the item is damaged by the use intended for it or has already been delivered damaged.

However, a defect is also referred to if, for example, the operating manual is missing, or the product was delivered in the wrong color or quantity. If such a defect exists, the buyer is entitled to various rights. First and foremost, he/she is entitled to a replacement(s).

The retailer can then choose to deliver a new product or repair the defect. If the replacement(s) fail, the buyer may withdraw from the contract, reduce the purchase price or claim damages.



ENFORCING THE LAW: **THE LEGAL WRITTEN WARNING**

If a retailer infringes on German law, he/she thereby receives an advantage in competition over the retailers who comply with the law. **If a retailer detects a violation of the law among his/her competitors, he does not have to sue them or report it to an authority.**

He can first issue a warning against the retailer. The purpose of a warning is to draw the attention to the retailer as to his/her misconduct and to persuade him/her not to make such a mistake again by signing a cease-and-desist

declaration with penalties. **In Germany, warnings are often feared among retailers because they are issued even in the case of the smallest errors.**

If a retailer is issued with a warning, he must always bear the costs, such as expenses and lawyer's fees, of the other retailer. **However, not everything is bad about warnings: they give competitors the opportunity to settle disputes among themselves at low cost instead of burdening the judicial apparatus directly.**

Go further!

