

VZBV FILES LAWSUIT AGAINST FACEBOOK

New court action required against the social network

- Facebook has failed to sign a cease and desist letter after receiving written warnings from vzbv in February
- Main issues raised: misleading advertising for an allegedly free service, problematic default settings, 19 clauses in their terms of use and privacy policy
- "Effective data protection laws must be enforced and should not merely exist on paper," says Klaus Müller, Executive Director of vzbv

The Federation of German Consumer Organizations (vzbv) for the third time has initiated legal action against Facebook . This time, the lawsuit targets

the "Facebook is and will remain free" advertising, problematic default settings and 19 clauses in Facebook's terms of use and data policy. "If it is labeled free of charge, it should be free of charge. While users do not pay for their Facebook accounts in euros, they do pay with their data. As we see it, advertising a free service is clearly misleading," says Klaus Müller, Executive Director of vzbv.

Facebook had failed to sign a cease and desist letter after receiving a written warning by vzbv in February 2015. In August, vzbv therefore filed an injunction procedure with the Berlin Regional Court. This means: vzbv has now filed a complaint against Facebook on all issues raised in its written warning.

The complaint in detail

Facebook is not free of charge: Facebook earns money with its users' data, first of all through targeted user advertising. Therefore, vzbv considers Facebook's own advertising stating that the service is and will remain free misleading.

Default settings: Facebook is not allowed to take the decision to whom, when and why user data is passed on to third-parties. vzbv considers that conditions for informed consent to problematic default settings are not met if an option is pre-checked.

19 clauses from the terms of use and the privacy policy: vzbv criticizes, among other things, that users have to provide their real names to use the service and that data may be transferred to the United States. The data transfer clause applies to "users and non-users who interact with Facebook outside the United States." The following scenario is conceivable: A consumer has no Facebook profile of his or her own but surfs the website and looks at public Facebook profiles of others. With this clause, Facebook reserves itself the right to store data of this consumer and to transfer it to the United States. Intelligence services would then also have access to that data.

"The recent ruling of the European Court of Justice in the matter of Safe Harbor (Maximilian Schrems vs. Facebook) confirms that we are on the right track with our commitment to more privacy. U.S. conglomerates may not simply ignore data and consumer protection laws in Germany and the EU. The European Commission must finally build a really safe harbor for personal data by drawing up a new Safe Harbor

agreement and a consumer-friendly General Data Protection Regulation. There must be an end to bogus data protection packs. The European Court of Justice has also set a clear target for the TTIP negotiations. And this target is genuine protection of consumer data," said Müller.

vzbv's lawsuit against Facebook sends out a signal: Existing legal provisions aimed at protecting personal data should not merely exist on paper, they must be enforced. Since it is difficult for individual consumers to fight with Internet giants such as Facebook, vzbv enforces their rights in court.

vzbv's complaint has been received at the Berlin Regional Court and is registered there under case number 116 O 341/15. In a next step, the complaint must be translated and presented in Ireland, where Facebook has its European headquarters. Facebook can then respond to the complaint. A date for a court hearing can be expected in the course of 2016.

Note:

Like previous lawsuits against Facebook, the injunction litigation is pursued under vzbv's Consumer Rights in the Digital World project funded by the German Federal Ministry of Justice and Consumer Protection (BMJV).

Other lawsuits by vzbv against Facebook (all information given in German):

Successful written warning given to Facebook and other social networks (2009)

<http://www.surfer-haben-rechte.de/content/mehr-verbraucher-und-datenschutz-sozialen-netzwerken>

Other court proceedings against Facebook that are not yet finally concluded:

[Judgment: Facebook Must Comply with German Privacy Laws](#) | Press release 2/17/2014

Current situation: The proceedings are continued before the Federal Court of Justice under case number ZR 65/14. A date for a hearing has been set for 1/14/2016.

[Facebooks App-Zentrum: Lösung zur Einwilligung in Datenweitergabe ist rechtswidrig](#) | Press release 11/7/2014

<http://www.surfer-haben-rechte.de/content/vzbv-reicht-erneut-klage-gegen-facebook-ein>

Current situation: Facebook has filed an appeal against the judgment of the Berlin Regional Court of 10/28/2014. A date for a hearing has not been set yet.

Downloads:

Infographic on Facebook

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