

MARKOS KYPRIANOU

MEMBER OF THE EUROPEAN COMMISSION

Brussels, 08. 02. 2006
D(2006)181

Dear Ms Lucas,

Thank you for your letter of 16 December 2005 concerning a marketing campaign for an on-line catalogue. The company of one of your constituents has been incited to apply for a listing in the catalogue while being under the impression that the listing was free of charge, and has later received claims from the company for payment for the listing.

The situation described by your constituent is well known to the Commission. Similar scams are operated by other companies such as the European City Guide, which has been operating from Spain. As regards the legislation applicable to such scams, the consumer protection legislation cannot be used as the targets of the scams are usually small businesses and not consumers. However, Directive 84/450/EC on misleading advertising could constitute a tool for combating such scams and there may be other rules in the laws of the Member States which enable their authorities to act in such cases. It is for the competent law courts or public enforcement authorities of the Member States to decide in each case whether a commercial communication is to be considered misleading or not. If it is considered misleading, a cessation order can be issued against it.

You mention the Commission's ongoing work on European Contract Law in relation to this scam. The Commission is indeed overseeing the preparation, through research, of a Common Frame of Reference in the area of European Contract Law which will be a toolkit to be used for improving the quality of the existing *acquis* and of future sector-specific legislation on European contract law, particularly in the field of consumer contracts. However, harmonisation of general contract law rules applicable to business-to-business contracts is not on the Commission's agenda. Indeed, there would not seem to be any need for legislative action in the area of contract law for the purpose of combating these scams. As far as the Commission is aware, existing national contract law of all Member States allows a party to avoid a contract in the case of fraud. As the practices of the companies involved in these scams are normally fraudulent, their claims are unlikely to be upheld in court. This is in line with the information received by the Commission on these scams; indeed, as your

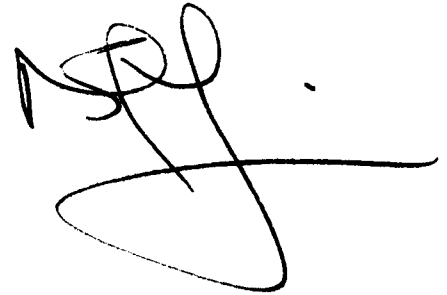
.. / ..

Ms Caroline Lucas, MEP
European Parliament
Rue Wiertz
1047 Brussels

constituent also affirms in his letter, there is no evidence that any of these guide companies has pursued the issue in the courts.

The activities of the guide companies therefore appear to be a problem of enforcement rather than of legislation. As mentioned above, enforcement is mainly an issue for the Member State authorities. The Commission is however following developments closely, especially in relation to the above-mentioned European City Guide. I am currently in contact with my counterpart in Spain in order to draw her attention to the problems linked to the European City Guide and inquire about any actions the Spanish authorities have recently taken in this respect.

Yours sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.