SKW Schwarz

Focus Topic Digital Health

LEGAL RESILIENCE

Guide & Checkliste

A Consumer Protection or Competition Association Is Taking Action Against Us.

What Should We Do?

The Practical Guide for Businesses in the Digital Health Sector.



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Your Situation / Possible Scenarios

Your company has received a cease-and-desist notice from a consumer protection association (e.g. a consumer advice centre).

Your company has received a cease-and-desist notice from a competition association (e.g. Wettbewerbszentrale, Verband Sozialer Wettbewerb or industry associations).

“When a consumer protection or competition association issues a cease-and-desist notice against your company, a thorough legal assessment, a strategically coordinated response and the early protection of your interests are essential.”

Dos

Seek qualified legal advice immediately.
Contact a lawyer specialising in intellectual property and unfair competition law or Healthcare & Life Sciences.

Check and note the response deadline.
Make sure to take the deadline seriously.

Provide your lawyer with complete, accurate and truthful information.
Forward the entire cease-and-desist notice, including all attachments, and respond to all questions promptly.

Ask about costs and fees.
Good lawyers are clear and transparent about their fees.

Discuss the commercial significance of the conduct in question and possible alternatives with your lawyer.

Follow your lawyer’s advice and implement their recommendations consistently. Be receptive to legal guidance.

Don’ts

Do not ignore or set aside the cease-and-desist notice or simply wait and see. Ignoring it may lead to court proceedings.

Do not rely on online searches for legal advice.
The internet is full of misleading information about cease-and-desist notices.

Do not rely on AI tools for legal advice.
General-purpose AI tools are often unsuitable for legal assessments. They can make mistakes or provide inaccurate recommendations, potentially leading to costly decisions.

Do not sign anything just yet.
The proposed cease-and-desist declaration may be flawed, unjustified or overly broad.

Do not communicate with the association directly.
Inappropriate or ill-considered communication cannot be undone. It may worsen the situation and limit your options for defence.

Risk Management & Practical Tips

Stay Calm!
Experienced lawyers know how to manage these situations effectively – from an organisational, procedural, commercial and financial perspective.

In most cases, associations are open to dialogue.
Let your lawyer handle the negotiations.

Associations do not always seek preliminary injunctions.
This may create valuable time and strategic flexibility, which you should discuss with your lawyer.

The best course of action always depends on the individual circumstances and often involves carefully weighing different options.
In some situations, submitting a cease-and-desist declaration may be the best solution; in others, taking the matter to court may be the better option. A sound legal strategy should always take commercial considerations into account.

Legal Resilience in Response to Cease-and-Desist Notices from Consumer Protection and Competition Associations:

What Is a Cease-and-Desist Declaration?
What Should You Be Aware Of?

- A cease-and-desist declaration is a legally binding undertaking to immediately discontinue the business practice specified in the declaration upon signing.
- Any breach of this undertaking may result in a contractual penalty.
- Only submit a cease-and-desist declaration on the advice of a lawyer. Once issued, it can often no longer be withdrawn or amended.
- The wording matters. Overly broad declarations can impose excessive restrictions, while declarations that are too narrow may fail to resolve the cease-and-desist claim. You are not required to sign the pre-formulated declaration provided with the notice. Lawyers specialising in this area know how to strike the right balance and draft an appropriate declaration.
- Deadlines are critical. If the declaration is not submitted or is submitted late, the opposing party may initiate court proceedings immediately after the deadline expires.

Resilience Strategy Following a Cease-and-Desist Declaration

- Ensure that the conduct covered by the cease-and-desist undertaking has been discontinued before signing. The undertaking takes effect upon signing and delivery to the opposing party.
- Send the information notice prepared by your lawyer to employees and authorised representatives no later than the time the declaration is submitted. Do not amend the wording. Its content may be essential in demonstrating the absence of fault in the event of a subsequent breach.
- Train your employees and monitor compliance.
- Investigate the causes of the infringement and take steps to prevent it from happening again.
- Disruptive or high-risk business strategies: Discuss risk mitigation measures with your lawyer. In many cases, straightforward steps can significantly reduce legal risks.

Resilience Strategy in Court Proceedings

- It may be advisable not to submit a cease-and-desist declaration and instead contest the matter in court – for example, if the notice is unfounded, the legal position is unclear or there are strategic reasons to do so.
- If you are served with a statement of claim: Contact your lawyer immediately. Very short deadlines may apply (e.g. two weeks to notify the court of your intention to defend the claim).
- If you are served with a preliminary injunction: You must comply immediately upon receipt, as non-compliance may result in enforcement measures. Contact your lawyer without delay.

- Develop a timeline, cost estimate and resilience plan together with your lawyer. Plan your budget, resources, roles and responsibilities.
- Assess whether a settlement (amicable resolution) is possible and makes strategic sense.
- Prepare for the worst-case scenario: No litigation is risk-free. Be prepared for an unfavourable outcome and its potential consequences. Develop a contingency plan (Plan B).
- Let commercial and strategic considerations guide your decisions, not emotions. Being legally right is not an end in itself. Your litigation strategy should always align with your company's business objectives.



Your Contacts

Your Legal Experts for Cease-and-Desist Notices Issued by Consumer Protection and Competition Associations in Healthcare, Life Sciences & Digital Health:



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Do you have any questions or need assistance?
Please feel free to contact us at any time!