

Landgericht Nürnberg-Fürth

Ref.: 11 O 3362/19

In the proceedings

XXXXXX

- claimant -

represented by:

Attorneys-at-law **Spirit Legal LLP**, Neumarkt 16-18, 04109 Leipzig, ref.: 19/306

against

Twitter International Company, One Cumberland Place, Fenian Street, Dublin 2, D02 AX07, Ireland

- defendant –

for injunctive relief

the Landgericht Nürnberg-Fürth - Civil Chamber 11 - hereby passes, through the Presiding Judge at the Landgericht XXX, the Judge at the Landgericht XXX and the Judge at the Landgericht XXX, on 7 June 2019, without a hearing for oral argument due to the urgency of the matter pursuant to Section 937(2) of the Code of Civil Procedure (ZPO), the following

ruling

1. By way of interlocutory injunction under threat of an administrative fine of up to two hundred and fifty thousand euros or administrative detention of up to six months – administrative detention also in the event that the administrative fine cannot be collected –, for each case of infringement, the defendant is hereby

prohibited

from temporarily suspending the claimant's account (“@-----”) on twitter.com due to the following statement on twitter.com:

“Aktueller Anlass: Dringende Wahlempfehlung für alle AfD-Wähler. Unbedingt den Stimmzettel unterschreiben. ;-)”

[Translation: “In light of recent events: urgent election recommendation for all AfD voters. Don't forget to sign your ballot. ;-)”]

2. The defendant must bear the costs of the proceedings.
3. The value in dispute is set at €10,000.00.
4. The following must be served with the ruling:
Application of 4 June 2019

Reasons:

I.

The claimant requests an interlocutory injunction aimed at prohibiting a temporary suspension of his account on twitter.com due to a statement written by him.

The defendant operates the platform “twitter.com”, including for users in Germany.

The claimant owns the account “@---” on the platform and also requires the account for his work at his company “---”.

On 5 May 2019, the claimant published the following tweet via his Twitter profile:

“In light of recent events: urgent election recommendation for all AfD voters. Don’t forget to sign your ballot. ;-)”. [Translated from German tweet; original above]

On 6 May 2019, the claimant was informed by the defendant that, due to this tweet, some features of his Twitter account had been temporarily restricted for an initial period of 12 hours.

The claimant appealed against this block on 6 May 2019, receipt of which was confirmed to him by the defendant.

On 7 May 2019, the claimant was informed by the defendant that his Twitter account had now been suspended due to this tweet.

The claimant appealed against this on 7 May 2019, which was again confirmed to him by the defendant.

In a letter dated 17 May 2019, the claimant formally warned the defendant and requested that it immediately reactivate his account. He set the defendant a deadline of 2pm on 18 May 2019 for this purpose.

To date, the defendant has not provided the result of any examination of the claimant’s objection request, and nor has it responded to the formal warning. The claimant’s Twitter account remains suspended. He can still log in to Twitter, but is unable to publish new tweets, read other tweets, retweet, like or comment on tweets.

With his application for an interlocutory injunction, the claimant submits the request pursuant to Section 1 of the operative provisions. Alternatively, he requests:

The defendant is obliged to reverse its suspension of the claimant’s Twitter account “@----” on twitter.com due to the statement “In light of recent events: urgent election recommendation for all AfD voters. Don’t forget to sign your ballot. ;-)” [Translated from German tweet; original above].

II.

The application for an interlocutory injunction is hereby granted.

1.

The application is admissible; in particular, the Landgericht Nürnberg-Fürth is the competent court.

International and local jurisdiction follows from Art. 7 of the Ordinance on Jurisdiction of the Courts and Recognition and Enforcement of Civil and Commercial Decisions (EuGVVO). For a contractual claim, jurisdiction follows from Art. 7 No. 1 a) EuGVVO, since the provision of Twitter's services would have to be fulfilled at the claimant's place of residence/work. A claim for injunctive relief analogous to Section 1004(1) Sentence 2 of the German Civil Code (BGB) in conjunction with Section 823(1) BGB falls under Art. 7 No. 2 EuGVVO. The terms "*unerlaubte Handlung*" ("tort") and "*Handlung, die einer unerlaubten Handlung gleichgestellt ist*" ("act equivalent to a tort") are to be interpreted autonomously and broadly (BGH, judgment of 8 May 2012 – VI ZR 217/08, NJW 2012, 2197 on the then Art. 5 No. 3 EuGVVO). The damaging event within the meaning of the standard occurs at the claimant's place of residence/work, as this is where the suspension is effective. The place where the damaging event occurred does not only include the place of action, but also the place of result, i.e. the place where the event that triggered the liability directly damaged the person directly affected (see *Dörner*, in: Saenger, Zivilprozessordnung, 8. Auflage 2019, Art. 7 EuGVVO, para. 32 with further references).

Substantive jurisdiction follows from Sections 937(1) ZPO, Section 23 No. 1, Section 71(1) of the Courts Constitution Act (GVG).

2.

The application is also justified, as the claimant rightly requests a prohibition of the temporary suspension.

a)

The claimant has a corresponding right to claim injunctive relief.

Pursuant to Section 1004(1) Sentence 2 BGB (analogously) in conjunction with Section 823(1) BGB, Art. 2(1), 5(1) Sentence 1 of the Basic Law (GG), the claimant has a right to claim injunctive relief against the defendant in order to prohibit a temporary suspension of his Twitter account due to the statement referred to in the operative provisions.

aa)

German law is applicable in this case.

In the [German version of the] Terms of Service, the section "*5. Haftungsbeschränkung*" ("Limitation of liability") stipulates that the defendant is subject to limited liability in accordance with the maximum permissible restrictions under the laws of the country in which the user resides. Accordingly, German law is applicable.

bb)

A contract on the use of the Twitter platform exists between the claimant and the defendant. In this context, the operator of such a platform may in principle also establish rules of conduct for the use of the platform and enforce these by suspending the user's account.

With its "Election integrity policy" published in April 2019, the defendant prohibited the use of Twitter for the purpose of manipulating or interfering in elections. This included posting or sharing content that has a negative impact on voter turnout or that makes false statements about when, where, or how to vote. Potential consequences of violations of this policy include, among other things, temporarily denying the user access to his or her account, up to and including a permanent suspension of the account. The suspension of accounts is also provided for in Section 4 of the [German version of the] Terms of Service.

In addition, the operator of an internet platform has a "right to ban someone from its 'virtual' premises" (see e.g. LG Ulm, ruling of 13 January 2015 - 2 O 8/15, MMR 2016, 31; OLG Köln, ruling of 25 August 2000 - 19 U 2/00, MMR 2001, 52; LG Mosbach, ruling of 1 June 2018 - 1 O 108/18, BeckRS 2018, 20323).

cc)

However, the platform operator may not exercise its powers without limits, but is limited by the values set forth in the Basic Law (GG), in particular by the indirect third-party effect of the freedom of expression pursuant to Article 5(1) GG (as supported by LG Mosbach, ruling of 1 June 2018 - 1 O 108/18, BeckRS 2018, 20323).

In this case, the statement by the claimant which caused the account to be suspended is covered by the fundamental right of freedom of expression. It is clearly the expression of a mere value judgement and not the assertion of untrue facts. In the case of satirical statements, the core of the statement, i.e. the meaning behind the literal content of the statement, must first be determined and evaluated (BeckOGK/*Specht-Riemenschneider*, 1 May 2019, BGB Section 823 para. 1289 with further references).

Looking at the statement at hand, the wink smiley at the end of the tweet clearly shows that this was not meant as serious advice to AfD voters. Rather, in this case the claimant was using satire or irony to express his negative attitude towards the AfD. The statement is characterised by the element of position and opinion (see BVerfGE 85,1).

This is a mere value judgement covered by the fundamental right of freedom of expression and cannot be objected to.

Taking into account the fundamental right of freedom of expression, a suspension of the claimant's account in the present case is therefore not justified and should be prohibited. For this reason, it does not ultimately need to be determined whether the "Election integrity policy" was effectively incorporated into the contractual relationship, since this too must in any case be interpreted in the light of the fundamental right of freedom of expression and, accordingly, does not cover the permissible expression of opinion in this case.

b)

There is a justification for injunctive relief, Sections 935, 940 ZPO.

The particular urgency of the prohibition results from the fact that the claimant also requires his Twitter account for his work. The restriction continues; the claimant can still log in to Twitter, but is unable to publish new tweets, read other tweets, retweet, like or comment on tweets.

The justification for injunctive relief is also not excluded due to the passage of time by way of self-rebuttal of the urgency. The claimant was informed on 6 May and on 7 May 2019 that his account had been suspended; the application for an interlocutory injunction was received by the court on 4 April 2019. The passage of time between these dates is thus borderline (see OLG Nürnberg, ruling of 13 November 2018 – 3 W 2064/18 –, according to which, in the event of the claimant waiting for more than one month after becoming aware of the the infringing act, urgency generally no longer exists), but does not in itself result in a self-rebuttal of the urgency, especially since in the meantime the claimant both appealed against the suspensions and also issued a formal warning to the defendant in a letter dated 17 May 2019, without any reaction on the part of the defendant beyond a mere confirmation of receipt of the objection.

3.

In the present case, it was possible to grant the interlocutory injunction by way of a hearing for oral argument, Section 937(2) ZPO.

The particular urgency arises in this case from the fact that, given the defendant's registered address in Ireland, experience has shown that it would take several weeks before the application and the summons could be served successfully, even if no translation of the application were required. In view of this, the claimant's right to effective interim relief would be compromised if a hearing for oral argument had to be held first.