

Cologne, 29 April 2020

Former Air Berlin CEO successfully defended by GÖRG against “class action” claim by debt collection agency

GÖRG Partnerschaft von Rechtsanwälten has successfully defended Thomas Winkelmann, former member of the Board of Directors of the insolvent Air Berlin PLC & Co. Luftverkehrs KG, against a claim by Airdeal Rechtsdienstleistungs GmbH (“Airdeal”) in proceedings for an alleged delay in filing for insolvency of Air Berlin. GÖRG lawyers Dr. Michael Dolfen and Christopher Schiller represented the former CEO in court.

Airdeal is a company to enforce claims in form of a class action model as a registered debt collection; in this particular case claims of customers whose flights were not operated due to the insolvency of Air Berlin.

Initially, the District Court of Berlin as court of first instance had already dismissed the claim by Airdeal due to the lack of capacity to sue as the business model violated the German Act on Out-of-Court Legal Services (*Rechtsdienstleistungsgesetz*). The Kammergericht (court of appeals) has now confirmed this ruling and rejected the appeal of Airdeal. In addition to Airdeal's lacking capacity to sue, which the Kammergericht explicitly denied also in the light of the recent decision of the German Federal Court of Justice (BGH) in the case of Lexfox (VIII ZR 285/18), the Kammergericht also highlighted that the former Air Berlin CEO ultimately was not likely to have violated any obligation to duly file for insolvency with regard to Sec. 15a of the German Insolvency Code (*Insolvenzordnung*). The appeal to the German Federal Court of Justice (BGH) was admitted with regard to the question of the admissibility of the business model of Airdeal under the German Act on Out-of-Court Legal Services.

Further proceedings in which individual Air Berlin creditors had attempted to assert claims against the former Air Berlin CEO were also unsuccessful.

Advisors Thomas Winkelmann

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About GÖRG

GÖRG is one of Germany's leading and independent business law firms.

With 290 lawyers and tax advisors in Berlin, Cologne, Frankfurt am Main, Hamburg and Munich, we advise well-known domestic and foreign businesses from all areas of industry, banking, real estate, trade, media and services on all core areas of business law.

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