

Press Release

++ 21.2.2011 — Viennese law firm *Fiebinger Polak Leon Attorneys-at-Law* invited architects and building contractors to a discussion concerning the Skylink decisions of the Austrian High Court (OGH).

“Where will your ideas end up following the Skylink decisions of the OGH?” Industry experts dealt with this question and many more during yesterday’s information evening on the protection of design services in conflict with the practise of awarding contracts.

Numerous guests attended the event held at the SkyBar in Vienna to listen to the explanations and practical experiences of the experts and then discuss the protection of design services. Back in 1999, architecture office Frank was ranked first alongside a second office in a competition for the design for the Skylink. The second office was ultimately awarded the contract, yet during construction of the Skylink, significant design services supplied by Frank were utilised. At the end of last year the OGH upheld the original ruling on this case: the use of creative design services of the office of Sepp Frank by Flughafen Wien was unlawful; in terms of unjust enrichment the right to appropriate compensation, to which Frank is entitled due to this use, falls under a 30-year statute of limitations period.

Introducing the topic to the audience, Christoph Leon, Partner at Fiebinger Polak Leon Attorneys-at-Law, described the substantial changes brought about by the decisions of the OGH concerning this case as well as the wider implications: “In cases of unlawful use of design services, there is an entitlement to compensation irrespective of whether the services are protected by copyright. The use of such design services is always unlawful if the planner has not given explicit consent. Therefore in many cases, in which plagiarism claims have broken down, there are now realistic chances of success.” Architect Sepp Frank himself gave an account of the details that led to the outcome of the Skylink case and called for the chamber to support the interests of individual architects. It was a call happily taken on by Walter Stelzhammer, President of the Chamber of Architects and Chartered Engineer Consultants Vienna, Lower Austria, Burgenland, who pointed out the difficulty of granting rights in architect contracts. Claudius Weingrill of Bundesimmobiliengesellschaft also contributed during the evening, drawing on his vast experience and commenting on the implications of the Skylink decisions from the perspective of building contractors.

The discussion was concluded by Constantin Kletzer, intellectual property specialist at Fiebinger Polak Leon Attorneys-at-Law, who detailed the relationship to copyright law and demonstratively explained under which conditions a service is actually protected. “In contrast to visual arts, the hurdle to achieving copyright protection for architectural ser-

vices, particularly for functional constructions, is far higher. Hence the entitlement to compensation is an ideal fallback position.

"If the Chamber of Architects can establish a team of authorised experts, who independently rule on the decisive question of whether design services have been utilised or not, it will be possible more often than not to find a solution without having to go to court. In cases where this is not achievable, the matter can – by means of the new judicature on statute of limitations periods – be resolved in court with a low risk of incurring significant costs," concluded Christoph Leon and Constantin Kletzer.

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About Fiebinger Polak Leon Attorneys-at-Law:

Fiebinger Polak Leon Attorneys-at-Law was founded in 1990. It is an internationally oriented, commercial attorney law firm, which has proven expertise in consulting multinational clients in Austria and Eastern Europe. It regularly accompanies large Austrian companies as they undertake commercial activities both in Austria and abroad. The law firm's clientele comprises companies of all sizes, both private and listed, as well as national and multinational organisations. Artists, cultural institutions, universities, local and national governments, non-profit organisations and private individuals are also among its clients.

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