[IT] AGCOM sanctions RAI for hidden advertising during the Sanremo Festival

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Francesco Di Giorgi
Autorità per le garanzie nelle comunicazioni (AGCOM)

The Italian Communications Authority (AGCOM), by means of Resolution No. 94/24/CSP dated 24 July 2024, published on 5 August 2024, fined the Italian broadcasting company RAI EUR 206 580.00, equivalent to twenty times the minimum fine, for an incident involving the shoes worn by John Travolta during the 74th edition of the Sanremo 2024 Italian Song Festival. The Authority deemed it a case of covert advertising, concluding that the current regulations on the proper disclosure of advertising messages had not been adhered to.

RAI argued that it had a specific contract with the renowned actor prohibiting the introduction of "elements with direct and/or indirect advertising and/or promotional value (including clothing and/or accessories used)" during his participation in the Sanremo Festival.

However, AGCOM examined whether covert audiovisual commercial communication occurs in two distinct phases. In the first phase, which involves determining the commercial nature of the communication, particularly product placement, the presence of promotional intent is verified through historical evidence of a client relationship between the audiovisual media service provider and the company producing the goods or providing the service. If such a relationship is not found or is denied, indirect evidence based on serious, precise, and consistent presumptions that indicate the promotional nature of the audiovisual communication is considered. In the second phase, which involves establishing the recognisability of the audiovisual commercial communication, it must be determined whether the audiovisual media service provider has taken all necessary measures to allow viewers to easily distinguish such commercial communication from editorial content.

In light of these considerations, AGCOM decided to sanction RAI due to the specific manner in which the product was depicted in the television footage. This footage included repeated, close-up shots of the product, making the relevant trademark clearly recognisable to viewers, particularly due to its distinctive colour.

Essentially, the covert audiovisual commercial communication was achieved through the surreptitious placement of the product during the television

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programme, with specific, persistent, and contextually irrelevant shots of the footwear aimed solely at advertising it.

AGCOM, in a specific press release, deemed the episode extremely serious, stating that

The product was displayed during RAI's most-watched television programme and during the performance of a guest of clear international fame, resulting in significant prejudicial effects to the detriment of viewers. In determining the sanction, AGCOM considered the repeated nature of RAI's conduct, noting that it had already been sanctioned for instances of covert advertising during the previous edition of the Sanremo Festival.

Delibera 94/24/CSP, Ordinanza ingiunzione nei confronti di Rai radiotelevisione italiana s.p.a. per la violazione della disposizione normativa contenuta nell'art. 43, comma 1, lett. a) del decreto legislativo 8 novembre 2021 n. 208 e nell'art. 48, comma 3, lett. d) del decreto legislativo 8 novembre 2021 n. 208 in combinato disposto con l'art. 6.2. del codice di autoregolamentazione di rai radiotelevisione italiana S.p.A. recante "Inserimento di prodotti nelle trasmissioni radiotelevisive" (Cont. 4/24/DSM n°proc. 2853/ZD)

https://www.agcom.it/provvedimenti/delibera-94-24-csp

Resolution 94/24/CSP, Injunction order against RAI Radiotelevisione Italiana S.p.A. for breach of the regulatory provision contained in Article 43, paragraph 1, letter a) of Legislative Decree No. 208 of 8 November 2021 and in Article 48, paragraph 3, letter d) of Legislative Decree No. 208 of 8 November 2021 in conjunction with Article 6.2 of the self-regulation code of RAI Radiotelevisione Italiana S.p.A. concerning "product placement in radio and television broadcasts" (Cont. 4/24/DSM No. proc. 2853/ZD)

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