[SE] The Market Court's Judgement in the De Agostini-Case concerning TV-Advertising Directed at Children

IRIS 1999-2:1/7

Helene Hillerström
TV4 AB

The prohibition of advertisements aimed at children on Swedish television has been subject to a judgment by the Market Court. In the "De Agostini case" two questions had to be considered by the Court. First, whether the Swedish prohibition of advertisements targeted at children constituted a violation of the free movement of services and, second, whether the Swedish rules on misleading advertisement could be applied to advertisements transmitted into Sweden from broadcasters established abroad.

In 1997, the Court of Justice of the European Communities issued a preliminary ruling on the question whether the Swedish prohibition against advertisements aimed at children may be applied to broadcasters established abroad but also serving the Swedish market. The answer of the Court of Justice was that it may not, since the "Television Without Frontiers" Directive contains a complete set of provisions on advertisements targeted at children. Consequently, a situation of double control of such advertisements would exist if the Swedish rules could be applied to broadcasters based in the UK where the Directive is already in force and under the supervision of the Independent Television Commission (ITC). When it comes to misleading advertisements, however, the Directive undertakes only partial co-ordination concerning advertising and its content, and Swedish rules on such advertisements may be applied to foreign broadcasts as long as this is not contrary to the free movement of services.

In the De Agostini case the Swedish Consumer Ombudsman (Konsumentombudsmannen) complained about a specific advertisement for De Agostini - a publisher of children's magazines - on TV3 (the advertisement was also shown on the Swedisch channel TV4). The channel is established in the UK and holds an ITC licence. According to the Ombudsman the advertisement was both aimed at children and misleading, and therefore violated the (Swedish) Marketing Practices Act.

The Market Court established that the Swedish prohibition of advertisements aimed at children is not contrary to the free movement of services, which means that the law may prohibit De Agostini advertising on channels of broadcasters established in Sweden (i.e. TV4). The Court therefore had no need to consider the principle of proportionality.

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When judging the advertisement on TV3, however, the Court had to take the preliminary ruling of the Court of Justice into consideration (see IRIS 1997-8: 5-6). Consequently, the Court decided that there were no impediments to De Agostini advertising on TV3 or any other foreign channel even though the advertisements were aimed at a Swedish audience.

Concerning the misleading character of the advertisement in question, the Court noted that the Swedish prohibition of such advertisements did not violate the free movement of services. Moreover, the Court found the advertisement misleading and it was prohibited.

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Judgement by the Market Court 20 November 1998, Decision nr 1998:17.

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