[DE] Courts Allow

IRIS 1999-10:1/9

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In its decision of 23 September 1999, the Frankfurt Appeal Court (Oberlandesgericht - OLG) rejected an appeal lodged by a private commercial television company against a ruling of the Frankfurt District Court (Landgericht - LG). The District Court had refused to grant a temporary injunction against the sale of the so-called "television fairy" (Fernsehfee).

The defendant sells a television attachment ("television fairy") which automatically switches to a channel without advertisements whenever there is a commercial break. The appellant claimed that its own existence was threatened by this product, since its advertising revenue might fall as a result. It asked for an injunction against the defendant on grounds of a breach of §1 of the Gesetz gegen den unlauteren Wettbewerb (Unfair Competition Act - UWG) and §823.1 of the Civil Code.

The OLG did not consider the sale of the "television fairy" a breach of competition law as set out in §1 UWG. It said that §1 UWG did not guarantee companies a general and comprehensive right to protection from interference from third parties. The whole nature of competition was such that new technical developments were constantly altering market conditions. In this case, at least according to current information, the "television fairy" did not cause interference, which was in any way unlawful or open to question.

The Appeal Court also found no breach of the basic rights to protection enjoyed by private commercial broadcasters and rejected the claim that freedom of broadcasting had been infringed. After weighing up all conflicting interests, the OLG concluded that (i) the company selling the "television fairy" had a guaranteed right to engage in unhindered commercial activity, that (ii) in accordance with general freedom of action and Art. 2.1 of the Grundgesetz (Basic Law - GG), television viewers were entitled to avoid unwanted advertisements, and that (iii) these rights took precedence. It could not be assumed at the time that the private broadcaster's actual existence was under serious threat.

Moreover, on 22 October 1999 the Kammergericht Berlin (Court of Appeal) lifted the temporary injunctions against the "television fairy" granted by the Berlin District Court to two other private broadcasters. A written explanation of this decision is not yet available.

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Urteil des OLG Frankfurt vom 23. Oktober 1999; AZ 6 U 74/99.

Judgement of the Frankfurt Appeal Court, 23 October 1999; case no. 6 U 74/99.

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