[BE] Public- and Private-Sector Television Fined for Surreptitious Advertising

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Since its installation in 1997, the Authorisation and Supervision Board of the regulatory body for the audiovisual sector (Conseil supérieur de l'audiovisuel (CSA)) of the French-speaking Community had been very sparing in its use of the power to sanction which it holds by virtue of the Decree of 24 July 1997; only two - minorsanctions had been imposed in two and a half years, one against a radio station which had changed its broadcasting frequency without authorisation, and the other against RTL-TVI for broadcasting violent images during a news broadcast. In the space of just over one month, on 5 April and 17 May, the Board has inflicted two further sanctions, this time for violation of the rules on surreptitious advertising (in both cases) and sponsorship (in the second case only).

In the first decision, RTBF has been fined BEF 50 000 (EUR 1 240) and ordered to read out a communication reporting the sanction for having broadcast, during a "Télétourisme" programme on water cures, an item on the Club Méditerranée in Vittel that was tantamount to surreptitious advertising. The CSA found that "there was no doubt that the unrestrained praise for the Club's activities and the repeated, persuasive nature of the presentation over a certain length of time constituted elements inherent in advertising matter", and the intentional nature of the infringement was presumed since "advantages in kind had been received, namely the RTBF team had stayed at Vittel free of charge".

The second decision involved a much heavier penalty for RTL-TVI for having devoted an entire day of air-time on its second channel (Club RTL) to Coca-Cola; the fine here was BEF 4 million (EUR 99 000). It has to be said that the infringement was blatant - the channel's logo was altered to look like the Coca-Cola logo, an item on the company in Atlanta was broadcast, the aspect and decor for the main programme was altered, and in addition to the usual female presenters there was a male presenter apparently paid and dressed by Coca-Cola. Moreover, the channel's advertising revenue for that day also showed a 200% increase compared with other days.

Thus the sanction was based not only on the surreptitious nature of the advertising, but also on the violation of the rules which prohibit the interference of the sponsor and the presence of its visual signs in the programme, as the CSA

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considered that "the surreptitious nature of the advertising and its sole insertion in programming where the main editorial and artistic features were resolutely oriented towards promotion of the Coca-Cola brand and product attest to the influence of the sponsor in such a way as to infringe editorial responsibility and independence".

The two channels have announced their intention to appeal against the decisions. If they are allowed to claim their cancellation by the Conseil d'Etat (the CSA has the status of an administrative authority), the length of the procedure (between three and six years on average) may mean that the dispute will also be brought before the courts for attachment if the official order to pay the fines is contested.

Décisions du Collège d'autorisation et de contrôle du CSA de la Communauté française n° 3 (5 avril 2000) et n° 4 (17 mai 2000).

http://www.csa.cfwb.be/avis/decision_03.htm

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