

[DE] The Federal Court Maintains the Ban on Benetton's Advertising Campaign, Considered to Be Illegal on Moral Grounds

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Andrea Schneider

Institute of European Media Law (EMR), Saarbrücken/Brussels

The Federal Court of Germany (Bundesgerichtshof) has endorsed a decision taken by the Regional Court (Landgericht) of Frankfurt on 6 July 1995 in which it stopped an advertisement and brochure campaign by the Italian clothing company Benetton.

Three advertising themes were used in the case as a representation of the whole campaign. They portray an oil-soaked duck floating in an oil slick, hard working children in the Third World and unclothed parts of the human body bearing the stamp "H.I.V. Positive". The slogan "United Colors of Benetton" appears in the bottom right-hand corner of each advertisement on a green background.

The office for the campaign against unfair competition objected to this type of shock advertising on the grounds that it was unfavourable to competition. It made an application for a restrictive injunction against Benetton and the publishers of the review "Stern" and won the case before the Regional Court of Frankfurt. The Federal Court was then asked to hear the case after one of the defendants lodged a special appeal. The court endorsed the findings of the court of first instance and rejected the appeal.

According to the Federal Court this type of attention grabbing advertising was against § 1 of Act on unfair competition. According to this Act, any action taken in business with regard to competition, and which goes against common decency, is forbidden. The fact that the advertisements which gave cause for complaint are not overtly connected to a product is not in contradiction with § 1 of the Act on unfair competition. Even pure attention grabbing or image promotion advertising which increases awareness of a company, and consequently its advertising impact, is considered to be fair competitive action in the terms of § 1 of Act on unfair competition.

In the present case, the accusation of immoral advertising is based on the fact that the portrayal of a being suffering badly appeals to strong feelings of compassion in the heart of the public and therefore infers that the company behind the advertising has similar feelings on the subject. This brings about a feeling of solidarity between the public and company behind the advertising

which is then exploited commercially. Moreover, an advertisement portraying human body parts and also bearing the stamp "H.I.V. Positive" severely violates the basic principles of the preservation of human dignity. AIDS sufferers are portrayed as branded and as such excluded from human society.

A press company which publishes such advertisements is also considered to act contrary to competition rules since it goes against its obligation not to publish advertisements which are obviously grossly unfavourable to competition.

Urteile des Bundesgerichtshofes vom 6.Juli 1995 (Az: I ZR 110/93 Anzeigenwerbung „Ölverschmutzte Ente“ und „Schwer arbeitende Kleinkinder der Dritten Welt“, I ZR 293/93 Anzeigen- und Plakatwerbung „Ölverschmutzte Ente“ und I ZR 180/94 „H.I.V. Positive“).

Ruling by the Federal Court on 6 July 1995 (Az: I ZR 110/93 "Oil-covered duck" and "hard-working young children in the Third World" advertising campaign, I ZR 293/93 "oil-covered duck" advertisement and brochure campaign and I ZR 180/94 "H.I.V. Positive").

