[DE] Court Rules on Alleged Unlawful Advertising in “Editorial” Reports

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In a recently published ruling, the Oberverwaltungsgericht Berlin (Berlin Higher Administrative Court - OVG) gave its opinion on the question of which legal measures the Medienanstalt Berlin-Brandenburg (Berlin-Brandenburg Media Authority - MABB) could use against a TV broadcaster that had shown what it considered to be an extended advertising programme.

In the programme ars vivendi, a so-called "top gastronomic TV magazine programme", various restaurants and hotels in the Berlin and Brandenburg region have been featured in rapid succession since 1997; since the total length of the programme was increased from 30 minutes to around 1 hour, each report lasts between 5 and 9 minutes.

In the court's view, the reports, without exception, portrayed a positive image of the featured establishments. When hotels were featured, special emphasis was given to the attractive surrounding landscape, room décor, service and so on. The reports on restaurants focused in particular on the dishes they served. These images were accompanied by complimentary, positive remarks about the quality of their preparation. The reports were produced under a scheme whereby a company, a subsidiary of the TV broadcaster, made so-called "PR videos" for the featured hotels and restaurants, for which the latter had to pay a fee. It was partly disputed, according to the court, whether the reports that were broadcast were identical to the aforementioned videos in terms of length and content.

According to the MABB, which first expressed this view in 1997, these programmes constituted "extended advertising". The Verwaltungsgericht Berlin (Berlin Administrative Court - VG) had ruled in the broadcaster's favour in the previous proceedings. In a ruling of 15 April 1999, the VG had overturned the decision to query the admissibility of the programme and demand that it be labelled as an "extended advertising programme" (see IRIS 1999-6: 7).

The OVG rejected the MABB's appeal against this decision. Like the VG, it did not believe that the provisions of the inter-state media agreement between the Berlin and Brandenburg Länder formed a sufficient basis to justify the action taken by the MABB that was disputed by the broadcaster. It was a legal requirement that broadcasters should label extended advertising programmes as such throughout the broadcast. However, the inter-state agreement did not stipulate that the

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regulatory authority should determine the nature of such a programme and order the broadcaster to label it accordingly. As for whether the reports constituted advertising, the OVG did not give an opinion on this question.

Oberverwaltungsgericht Berlin, Az.: 8 B 13.00, Urteil vom 26. November 2002

Berlin Higher Administrative Court, case no.: 8 B 13.00, ruling of 26 November 2002

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