[AT] Ruling on ORF Advertising

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On 19 May 2003, the Bundeskommunikationssenat (Federal Communication Senate - BKS) responded to complaints from several commercial radio broadcasters against the public service broadcaster ORF relating to advertising in the programme Starmania. The decision addressed some fundamental questions concerning the ORF's right to advertise.

The BKS noted that, under Article 14.5 of the ORF-Gesetz (ORF Act), ORF is prohibited from using so-called "product placement" unless it is necessary within the context of the programme. Consequently, a large proportion of the product placement in the Starmania programme had been broadcast in breach of the ORF-Gesetz. Furthermore, spots advertising a game bearing the name of the programme and a brand of crisps had not been labelled as advertising (Art. 13.3 ORF-Gesetz) and therefore contravened the principle of separation between programme and advertising material (Art. 15.2 ORF tising for ORF's radio stations may not be broadcast on its TV channels and vice-versa (cross-promotion), unless it consists of references to the content of individual programmes. The BKS ruled that the transmission on TV of a trailer containing a direct reference to an ORF radio station was in breach of this provision.

Further complaints, however, were rejected. For example, the BKS did not consider that advertising shown between the main Starmania programme and the public vote was unlawful under the terms of Article 14.8 of the ORF-Gesetz, since these were independent sections. The Act did not suggest that this natural break should be artificially linked by the insertion of additional programming items. Nor was it logical to argue that (admissible) product placement amounted to surreptitious advertising. Similarly, revenue from the voting (use of telephone numbers for value-added services) did not infringe the provisions of Articles 1.4, 2.1 and 4.3 of the ORF-Gesetz, under which ORF was prohibited from making a profit from its public service remit. Since ORF was allowed to seek and make a profit from other permissible activities and since the Starmania programme did not form part of its public service programming remit, the ban on profit-making did not apply in this case.

Entscheidung des BKS vom 19. Mai 2003

http://www.bka.gv.at/medien/innviertel-starmania.pdf

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BKS decision of 19 May 2003

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