[SE] Decision on Refusal to Broadcast Advertisement on Scientific Testing on Animals

IRIS 2003-7:1/25

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In February this year, Granskningsnämnden för radio och TV (the Swedish Broadcasting Commission) had to decide whether the national commercial television channel TV4, could be blamed because of its refusal to broadcast a commercial concerning scientific testing on animals. The commercial was a parody of the well-known commercial for L'oréal with the slogan: "because I'm worth it". The testing was illustrated by a brief cartoon, in which a small animal had, for example, corrosive acid sprayed in his eyes. A beautiful real-life woman said ironically that she wanted to protect what were the most precious things for her: her skin and her hair. Therefore, she continued, over 35.000 animals in Europe must die in pain because of scientific testing on animals. The result, she declared, "is a more beautiful world for you and me". The following text appeared at the end of the commercial: "Most of the cosmetic companies are testing on animals. Some do not. Read who is who on www.djurensratt.org [the internet web-site for the Association of Animal rights]".

According to Chapter 6 paragraph 5 of the Radio och TV-lagen (the Radio and Television Act - Act No.1996:844), advertising to win support for political or religious views, or views relating to special interests in the labour market sphere, is not allowed. According to the conditions of its broadcasting licence, TV4 is not allowed to discriminate between advertisers: they are to be treated equally.

TV4 refused to broadcast the commercial because of the prohibition on political advertising. The channel argued that broadcasting the commercial would constitute a breach of the Radio and Television Act. TV4 also argued that the purpose of the refusal was not to discriminate against the association as an advertiser.

The first issue to consider was whether TV4 had reason to believe that the commercial was a political advertisement, which the channel was obliged not to broadcast.

The Swedish Broadcasting Commission found that the marketing of certain products was only indirectly carried out through the reference to the list of products on the association's web-site. The main purpose of the commercial was to criticise scientific testing of cosmetic products upon animals. Its aim was

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therefore principally to arouse public opinion in favour of the association's views.

The Commission referred to the judgment by the European Court of Human Rights in the case of VGT Verein gegen Tierfabriken v. Switzerland (see IRIS 2001-7: 2). The circumstances of this case were that a television company had refused to broadcast a commercial concerning animal welfare submitted by the Verein gegen Tierfabriken (Association against industrial animal production VGT). The commercial was considered to be a response to the advertisements of the meat industry and ended with the words "eat less meat, for the sake of your health, the animals and the environment." The court's conclusion was that the refusal to broadcast VGT ´s commercial could not be considered as necessary in a democratic society and that consequently there had been a violation of Article 10 of the European Convention (freedom of speech).

When dealing with the question of whether TV4 should be criticised for its refusal to broadcast the commercial, the Commission held that, in light of the case-law of the European Court of Human Rights, there was uncertainty as to whether the commercial could be seen as a prohibited political advertisement. Since the commercial had not been broadcast and as the Commission, due to the ban on censorship, is not allowed to monitor programmes that have not been broadcast, the Commission could not take a definite position on this point. However the Commission held that nothing had occurred which implied that TV4 intended to discriminate against the advertiser. Thus, TV4 had not violated the prohibition to discriminate between advertisers.

BESLUT SB 117/03 2003-02-19 Dnr: 1239/02 SAKEN TV4:s vägran att sända en annons från Förbundet Djurens rätt; fråga om TV4 diskriminerat en annonsör

Decision of the Swedish Broadcasting Commission, of 19 February 2003, SB 117/03

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