[NL] Self-Promotion Qualifies as Advertising

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The Dutch television programme " Breekijzer " was fined by the Commissariat voor de Media (the Dutch Media Authority - CvdM) for self-promotion. The broadcaster of the programme, SBS6, appealed, but the Court rejected the appeal on the merits of the case. In the final appeal, the ABRvS (the Dutch Supreme Court for Administrative Law) upheld the verdict of the CvdM.

According to Article 52j of the Mediabesluit (Dutch Media Regulation), commercial broadcasters may not show names, pictorial marks, services and activities, etc., of persons, companies or institutions in television programmes, when the intention is to stimulate the sale of products or services.

In this case, at the end of the programme, text appeared on the screen that promoted the Breekijzer legal advice telephone service that charges the commercial rate of EUR 1.50 per minute. This telephone service is run by employees of Jurofoon (a legal service), who are paid out of the proceeds from the telephone service. Part of these proceeds goes to the producer of Breekijzer. SBS6 claims that article 52j is not applicable, as it does not concern self-promotion. The ABRvS, however, stated that it is a fact that self-promotion is a special sort of advertising and can thus be qualified as such (as is clear from the explanatory notes to the Mediabesluit). Furthermore, the announcement at the end of the programme was made by Breekijzer in order to entice the public to purchase its services. The conclusion of the ABRvS is that article 52j was violated.

When the Television without Frontiers Directive was implemented, it was specified that announcements made by broadcasters with regard to their own programmes were not considered as advertising. The ABRvS now states that this only relates to the provisions on the limitations on advertising transmission time.

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