[DE] Automatic Advertising Blocker Legitimate

IRIS 2004-7:1/11

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In a ruling of 24 June 2004, the Bundesgerichtshof (Federal Supreme Court - BGH) confirmed that a so-called television advertising blocker was admissible under competition law (see IRIS 1999-10: 7).

The dispute between a private TV broadcaster funded through commercial advertising and the defendant concerned a device produced and sold by the latter, which could be connected to a TV or video recorder. This device automatically switches to a channel without advertisements whenever there is a commercial break on the selected channel. At the end of the advertisements, the device switches back to the original channel.

The TV broadcaster argued that the production and sale of the device breached Art. 1 of the Gesetz gegen den unlauteren Wettbewerb (Unfair Competition Act - UWG). It accused the defendant of causing an obstruction and "general interference with the market". The court of first instance upheld the broadcaster's complaint, but the appeal court rejected it.

The BGH agreed with the appeal court's decision. It held that there was indeed a competitive relationship between the parties, since the defendant and the appellant both targeted TV consumers, albeit with different products.

However, the defendant was not guilty of breaching competition law. There was no apparent obstruction of the appellant's business, since the defendant did not directly influence the appellant's broadcasts, including advertisements. The advertising blocker merely provided viewers who wished to avoid advertisements with the technical means of doing so. The viewer therefore dictated whether the advertising should be switched off. Neither did the device affect the appellant's programming freedom, a key element of freedom of broadcasting. Freedom of broadcasting, as well as the defendant's basic right to engage in unhindered commercial activity, had therefore been taken into account by the appeal court in the necessary weighing up of interests.

Therefore, the appeal court had rightly dismissed the notion that the device caused unlawful interference with the market. Although the appellant's commercial activity was impeded by the sale of the advertising blocker, its actual existence was not under serious threat.

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Urteil des Bundesgerichtshofs vom 24. Juni 2004, Aktenzeichen I ZR 26/02

Ruling of the Federal Supreme Court, 24 June 2004, case no. I ZR 26/02

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