[DE] RTL Withdraws Complaints to Constitutional Court

IRIS 2004-9:1/13

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RTL Television, the German subsidiary of the Luxembourg-based RTL Group, has withdrawn a complaint to the Bundesverfassungsgericht (Federal Constitutional Court) against a decision of the Oberlandesgericht Celle (Celle Appeal Court - OLG). The proceedings concerned the forfeiture of income earned from illegal advertising. In 1997, the OLG had ruled in the last instance that RTL could not take advantage of the more relaxed regulations governing series when calculating the maximum permissible number of commercial breaks (see IRIS 1997-7: 11).

The relevant media supervisory body, the Niedersächsische Landesrundfunkausschuss (Lower Saxony Broadcasting Commission), predecessor of the Niedersächsische Landesmedienanstalt (Lower Saxony Media Authority NLM), had taken administrative court proceedings against the broadcaster. The proceedings brought by RTL with the Oberverwaltungsgericht Niedersachsen (Lower Saxony Administrative Appeal Court - OVG) were adjourned and referred to the European Court of Justice (ECJ) for a preliminary decision. In a ruling of 23 October 2003, the ECJ supported the interpretation of the supervisory body. The OVG then dismissed the complaint by RTL Television.

The appeal to the Constitutional Court concerned the forfeiture in accordance with the Ordnungswidrigkeitengesetz (Regulatory Offences Act - OwiG) of the resulting profits, which in this case amounted to more than EUR 10 million. The forfeiture had been deferred in 1998 because of the expected appeal to the Constitutional Court and the proceedings pending before the OVG.

In another dispute concerning the admissibility of advertising blockers (the so-called "TV fairy"), RTL, having considered the reasons for the BGH's ruling, has decided not to appeal to the Constitutional Court. The BGH (Federal Supreme Court) had largely upheld the appeal court's decision in its ruling of 24 June 2004 (see IRIS 2004-7: 7). According to press releases, RTL decided to take no further action in view of the fact that the disputed first generation products had since been withdrawn from the market. Nevertheless, it wishes to make sure that similar products are banned. Following the granting in early 2004 of an RTL appeal for a temporary injunction against the marketing and sale of such products, an oral hearing has been set for mid-October 2004.

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

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

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