[DE] Ring Tone Advertising Banned

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At its meeting in Saarbrücken on 30 March 2005, the Gemeinsame Stelle Programm, Werbung und Medienkompetenz (Joint Body on Programming, Advertising and Media Competence - GSPWM) of the Landesmedienanstalten (regional media authorities) discussed the issue of advertising for mobile phone ring tone downloads on a private TV channel. The GSPWM recommended that the media authority responsible for the broadcaster concerned should take legal measures on account of a breach of advertising rules.

The TV broadcaster advertises ring tones containing excerpts from the theme music of several of its programmes. During the programmes concerned, a rolling message appears at the bottom of the screen, inviting viewers to download these ring tones.

Surreptitious advertising is banned under the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RfStV), in accordance with the provisions of the EC Television Without Frontiers Directive. There are also provisions, in line with the Directive, concerning the admissibility of TV advertising breaks. The RfStV also contains a specific rule allowing split-screen advertising under certain conditions (see IRIS 2004-3:7).

It was questionable whether, in this case, the message concerned could be classified as a reference to material accompanying the programme. Under Art. 45.3 RfStV, such references are allowed and should not be included in the maximum daily or hourly advertising quota if they refer to materials directly derived from the programme concerned. This rule is explained as follows in Article 15 paras. 4 and 5 of the Gemeinsame Richtlinien der Landesmedienanstalten für die Werbung, zur Durchführung der Trennung von Werbung und Programm und für das Sponsoring im Fernsehen (Common Guidelines of the regional media authorities on advertising, the separation of advertising and programme content and sponsorship on television), as amended on 10 February 2000:

"References to ways of purchasing copies of the broadcaster's TV programmes on audio and video cassette, record and similar pictograms and phonograms shall not be subject to the advertising regulations.

"References to books, records, videos and other publications, such as games, and where they can be acquired, shall not be subject to the advertising regulations if

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they explain, reinforce or follow up the content of the programme."

The GSPWM decided unanimously that none of the aforementioned conditions had been met and that an advertisement had therefore been broadcast. However, this could not be allowed under Art. 7.4 RfStV, which deals with split-screen advertising, since there had been no clear visual separation between the programme and the advertisement.

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