[DE] Rulings on Separation Principle for Radio and Internet

IRIS 2005-9:1/10

Sonnia Wüst
Institute of European Media Law (EMR), Saarbrücken/Brussels

In July 2005, the Berlin Kammergericht (Supreme Court) and Landgericht (District Court - LG) ruled in two cases on the media law principle of separation between editorial content and advertising.

The Kammergericht granted an application brought under competition law by a local radio broadcaster for an injunction against the supplier of the disputed programme. The dispute concerned an interview with the owner of a local meat company, produced by the defendant and broadcast by the claimant. The court ruled that the interview breached competition law, since it amounted to surreptitious advertising under Articles 3 and 4.3 of the Gesetz gegen den unlauteren Wettbewerb (Unfair Competition Act - UWG) and Articles 3 and 4.11 UWG in conjunction with Articles 2.2.2 and 7.6 of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV). The court decided that, even though there was no proof that money had changed hands or that there was any direct connection with a newspaper advertising campaign, the law on fair competition had been broken on the grounds that consumers regularly attached greater importance to editorial content than to advertising that was clearly identifiable as such. It was true that editorial reports on companies could have a certain advertising effect. In this case, however, the repeated references to the company name, the presenter's complimentary remarks ("Pleasure here has a specific name: Landfleischerei K.") and the concluding recommendation ("Why not simply call in to Landfleischerei K. or visit the website..."), constituted more than factual information and amounted to unequivocal praise of the company concerned. Alongside the highly suggestive nature of the journalistic report, the court held that competition rules had been breached because other companies might be led to expect similar treatment if they advertised on the defendant's radio station.

Meanwhile, the Berlin District Court also found that Articles 3 and 4 UWG had been breached, this time in conjunction with Article 7 of the Teledienstegesetz (Teleservices Act), by the Internet edition of the Bild-Zeitung. The court ruled that the hyperlink to the defendant's sales promotion page, under the slogan " Volks-Seat ", did not sufficiently meet the need for separation of editorial content and advertising. Such a link, which led from an editorial page to an advertisement, should be designed so that users could recognise that they were being directed to an advertisement. Even though Internet users were accustomed to seeing advertising and more liberal rules should therefore be applied, it was

© European Audiovisual Observatory (Council of Europe) 2026

unacceptable that the nature of the advertisement was only revealed when the link was used.

LG Berlin, Urteil vom 26. Juli 2005, Az.: 16 O 132/05

Berlin District Court, ruling of 26 July 2005, case no.: 16 O 132/05

KG Berlin, Beschluss vom 29. Juli 2005, Az.: 5 W 85/05

Berlin Supreme Court, ruling of 29 July 2005, case no.: 5 W 85/05

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026