[DE] Decision on Publicity Measure Targetting Children

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On 12 May 2005 the Frankfurt Oberlandesgericht (Court of Appeal - OLG) ruled on a publicity measure specifically aimed at children.

The Court had to decide on an urgent case brought by the Zentrale zur Bekämpfung unlauteren Wettbewerbs (centre for the prevention of unfair competition) concerning a special offer proposed by a sweet manufacturer, involving “milk tokens” printed on the sweet packets, some of which could be exchanged for bonuses. The applicant claimed the special offer exploited children's lack of experience of commercial matters, and that therefore the publicity stunt constituted unfair competition and should be discontinued.

The Court found that children's inexperience could be deemed to be exploited if they were tempted into buying goods that were over-priced or unsuitable, if the special offer was not transparent enough, of if the intention was to exploit children's hoarding instinct or encourage them to make purchases beyond their requirements. It was necessary in each separate case, however, to determine both the intended and the actual influence of the publicity on children.

In this particular case the Court found no evidence of over-pricing. Furthermore, the bonuses had not been so enticing as to tempt children into purchasing more sweets than necessary.

Consequently, there was no evidence of unfair competition.

Entscheidung des OLG Frankfurt a.M. vom 12. Mai 2005, Az. 6 U 24/05

Decision of the Frankfurt Oberlandesgericht of 12 May 2005, Az. 6 U 24/05

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