[AT] Federal Communications Court on Unauthorised Advertising

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Kathrin Berger
Institute of European Media Law (EMR), Saarbrücken/Brussels

In its ruling of 6 September 2005 the Federal Communications Court (BKS) issued two decisions on unauthorised advertising on the Austrian Broadcasting channel (ORF), the public service broadcaster.

In one instance the ORF had broadcast two CD adverts without distinguishing them from the preceding or subsequent programme content being shown. In the opinion of the BKS, this constituted an infringement of § 13 paragraph 3 of the Austrian Broadcasting Act, whereby advertising must be clearly recognisable as such, and by using visual and acoustic effects must be clearly distinguishable from other parts of the programme. The fact that these were adverts was indicated by the fading-in of the insert “ORF Advertising”. However there was no distinctive acoustic and visual separation from the programme content being broadcast before and after.

In its second decision, the BKS established that there had been a violation of the ban on surreptitious advertising under § 14 paragraph 2 of the Austrian Broadcasting Act. The Austrian public service broadcaster had, after the general weather forecast, shown the “skiing weather”, which was introduced with words by the weather forecast presenter. During the “skiing weather”, shots of mountains and skiers were displayed. At the bottom end of the screen an insert with the name of an Austrian skiing region was faded in. The text read out which accompanied the images also referred to this skiing region. Finally a still was faded in, on which, amongst other things, reference was made to the support of a tourist association.

The BKS ruled that the preconditions for inadmissible surreptitious advertising were present. The advert had been intentionally earmarked by the ORF for advertising purposes. It emerged, amongst other things, that the broadcasting had been offered for sale through the advertising firm of the company and local authority interested in the ORF. There was, however, no tangible concrete agreement with the ORF. Moreover the advert was so camouflaged that it was not recognisable as such to the general public. Given the way it was broadcast, as well the editorial transition involved, the impression was given that this was a special part of the weather forecast. Consequently the television audience was led to believe that purely information was being broadcast and it was unaware that it

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was being subjected to advertising features.

Regarding the violations, the ORF was required to broadcast the decisions during the time slot reserved for the programme criticised.

The ORF was free, within six weeks of notification, to lodge a complaint against the ruling with the Administrative Court and/or the Constitutional Court.

Bescheid des BKS vom 6. September 2005

http://www.bka.gv.at/Docs/2005/9/22/611.009_0031_BKS_2005.pdf

Ruling of the Federal Communications Court of 6 September 2005

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