[DE] BGH Rules on Ring Tone Advertising

IRIS 2006-5:1/15

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

On 6 April 2006, the *Bundesgerichtshof* (Federal Supreme Court - BGH) ruled on the admissibility under competition law of ring tone advertising in children's magazines.

The *Bundesverband der Verbraucherzentralen und Verbraucherverbände* (Federation of German Consumer Organisations) had complained that an advertisement for mobile phone ring tones in a children's magazine had only mentioned download costs per minute. The Federation believed that young people were unable to estimate the length of the download and the resulting overall cost. Since this information did not appear in the advertisement, the Federation argued that it breached competition law.

The *BGH* agreed that the advertisement infringed competition law and confirmed the earlier decisions of the *Landgericht Hamburg* (Hamburg District Court) of 14 May 2002 and the *Hanseatische Oberlandesgericht Hamburg* (Hamburg Hanseatic Appeal Court) of 10 April 2003.

According to Art. 4.2 of the *Gesetz gegen den unlauteren Wettbewerb* (Unfair Competition Act - *UWG*), an offence is committed if advertising is likely to take advantage of the lack of commercial experience of children or young people in particular, or the credulity, fear or predicament of consumers.

The *BGH* considered that these conditions had been fulfilled. The advertisement had been deliberately directed at young people, since more than 50% of the readers of the magazine in question were children or teenagers.

A crucial factor in deciding whether the inexperience of children and teenagers was being exploited was the extent to which their inexperience influenced their response to the advertisement. Young people needed to be told clearly how much the product would cost since they were not yet able to correctly assess this aspect of an advertisement.

Where ring tones were concerned, these costs were not easy to understand. To compound the problem, the actual cost only became clear at a later date, when the bill was received.

This ruling should also be significant for ring tone advertising in the electronic media, such as television, where the actual costs should be made clear - at least

© European Audiovisual Observatory (Council of Europe) 2026

where advertising is deliberately directed at children or teenagers.

Urteil des BGH vom 6. April 2006 (I ZR 125/03)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=46ef19e36f333579f65f0184cb462f72&nr=35848&pos=0&anz=1

Ruling of the Federal Supreme Court, 6 April 2006 (I ZR 125/03)

Urteil des LG Hamburg vom 14. Mai 2002, Az. 312 O 845/01

Ruling of the Hamburg District Court of 14 May 2002, case no. 312 O 845/01

Urteil des Hanseatischen OLG Hamburg vom 10. April 2003, Az. 5 U 97/02

Ruling of the Hamburg Hanseatic Appeal Court of 10 April 2003, case no. 5 U 97/02

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026