[AT] Product Placement and Self-advertising on the ORF Television Channel

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The Federal Communications Commission (BKS) established in May 2003 that ORF had on several occasions during the television programme “Starmania” violated the ORF law on advertising limitations (see IRIS 2003-7: 6). With regard to the appeal of ORF against this decision, the Administrative Court ruled as follows:

1. The BKS had established that ORF had repeatedly shown crisp packages, mineral water bottles, a one metre high tube as well as plasma television screens, which all clearly bore a brand name. It considered that this constituted a violation of the ban on product placement in that such a practice was always banned on ORF, when it was not necessary to the broadcast or report. The BKS asserted that there was no such necessity in this particular context.

The VwGH did not agree with the interpretation of the ORF law. In its opinion the admissibility of product placement is not to be guided by establishing necessity. Product placement is on the contrary allowed on ORF, when the consideration that it receives in exchange is only of little value, as is explicitly provided in § 14 paragraph 5 of the ORF law. According to the court, the assessment of the value of the consideration did not depend solely on the actually agreed service but on the objective value of the mention or the presentation of the brand or product. On this point the VwGH overruled the initial decision.

2. The BKS had furthermore established that on television ORF had broadcast an advertisement for a game awarding prizes on the ORF radio station Ö3 and therefore had identified a violation of the ban on ORF advertising its radio stations on its television channels.

ORF argued in its appeal that references to mere individual items of programme content were excluded from the ban on self-advertising and an advertising feature was a necessary component of each basically allowed reference to programme content on other channels.

The VwGH therefore confirmed the observation of the BKS. The advertisement contained an original presentation and action, in which well-known ORF television presenters took part. Due to these circumstances, argued the Court, the advertising aspect was in the foreground and the informative, editorial content in the background. The BKS was therefore right to find a violation of the ban on self-

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advertising.

Entscheidung vom 27. Januar 2006 (2004/04/0114)

http://www.vwgh.gv.at/Content.Node/de/presse/pressemitteilungen/2006/2004_04_0114.pdf

Ruling of 27th January 2006 (2004/04/0114)

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