[AT] Federal Communications Board Ruling on Sponsoring/Surreptitious Advertising

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In its “connect it“ decision on 26 February 2007, the Austrian Federal Communications Board (BKS) dealt with a so-called sponsorship broadcast in which the products and services of sponsors were extensively presented and endorsed in two editorial reports. The issue concerned whether or not there was a breach of § 46 para. 2 Fig. 3 of the Private Television Act (corresponding to Art. 17 para. 1 lit c of the Television Without Frontiers Directive) under which sponsorship broadcasts may not suggest the purchase, hire or lease of the products or the engagement of the services of the principal or a third party, in particular through specific promotional references to these goods or services. Of particular concern for the BKS was the determination as to when such reports are to be described as advertising.

Whether advertising is present or not, according to the BKS, is a value judgement to be considered as a legal issue and not as a matter for experts. If a company aims at achieving no more than an “image effect” by sponsoring a broadcast, then it must make sure, together with the broadcaster, that the broadcast does not stray over the boundary into advertising particularly through promotional material. The intentionality of presentation for advertising purposes is indicated on the basis of the contractual relationship involving payment as sponsor. Parading the brand of a sponsor’s product during a broadcast over-emphasises the supplying of goods and services and, under standard case law, crosses the line into advertising territory.

In the case in point, it was found that there was (surreptitious) advertising. The reasoning was the excessive emphasis on product features, deliberate enquiries about company offers during the interview, the indistinguishable conflation of advertising features in an apparently journalistic editorial format (an interview), the patchwork of statements by company representatives mingled with promotional remarks by the moderator, the repetition of company slogans and a twice repeated reference to a specific written promotion.

In summary, the BKS thus interpreted the descriptions and portrayals in the two contributions as being intended for advertising purposes and that they could mislead the general public as to their true purpose, due to the way in which they were incorporated into the broadcast.

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Bescheid des BKS (Gz.: 611.001/0012-BKS/2006) vom 26. Februar 2007

http://www.bundeskanzleramt.at/Docs/2007/3/8/611001_%200012_%202007.pdf

Ruling of the Federal Communications Board (Gz: 611.001/0012-BKS/2006) on 26 February 2007

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