[AT] BKS Decisions on Teleshopping and Self-advertising under the ORF Act

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At its meeting on 26 April 2007, the *Bundeskommunikationssenat* (Federal Communications Board - BKS)) took decisions on two different issues relating to advertising in programmes broadcast by the *Österreichischer Rundfunk* (Austrian Broadcasting Corporation - ORF).

The first concerned the broadcast of a programme on ORF 2 in which the audience's attention was drawn to the musical event "Starnacht in Montafon" wherein the number of the ticket sales hotline was faded in on screen, and an announcement was made concerning the broadcasting of the recorded programme. The BKS ruled that this was a breach of section 13(2) of the *ORF-Gesetz* (ORF Act), according to which the ORF is not allowed to sell airtime for teleshopping. Additionally, the court stated that directly initiating an ordering process by making contact details available constituted a direct offer to the public within the meaning of this provision, with the consequent need to protect the viewer from taking overly hasty action. It considered that this had happened here and hence that the limits of a mere programme announcement had been exceeded.

Another issue on which the BKS had to rule concerned the broadcasting of self-advertising in the regional programming of ORF 2. Under section 13(7) of the *ORF-Gesetz* , commercials may only be broadcast nationwide. In its decision, the *BKS* now applied this rule to self-advertising by basing the interpretation of the term *Werbesendung* ("commercial") on the definition of "commercial advertising" contained in section 13(1) of the *ORF-Gesetz* . The court found that, contrary to the view put forward by the ORF, section 13(5) of the *ORF-Gesetz* , according to which references to a broadcaster's own programmes are not taken into account when calculating the total advertising time, did not preclude the interpretation of the BKS. Rather, section 5 was a *lex specialis* for the calculation of the total permissible advertising time (which is also laid down in section 13(7) of the *ORF-Gesetz*). In addition, a logical argument supported the interpretation adopted, because the aim of section 13(1) of the *ORF-Gesetz* with regard to the regionalisation of advertising was similar to that of the ban on cross-promotion in section 13(9).

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Bescheid des BKS vom 26. April 2007 (Gz.: 611.009/0012-BKS/2007)

http://www.bka.gv.at/Docs/2007/5/10/starnacht.pdf

BKS decision of 26 April 2007 (Ref.: 611.009/0012-BKS/2007)

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