[AT] TV Advert for Betting Website Admissible

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The *Bundesgesetz über den Österreichischen Rundfunk* (Federal Act on the Austrian Broadcasting Corporation) prohibits *Österreichische Rundfunk* (Austrian Broadcasting Corporation - ORF) from promoting illegal activities through television advertising and teleshopping. The same rule applies to private TV channels. In proceedings before the *Bundeskommunikationssenat* (Federal Communication Senate - BKS), a company accused ORF of violating this ban by broadcasting an advertising spot.

The spot begins with images from everyday city life. A man in a suit and a crowd of onlookers see a plastic cup on the ground. The man runs up to the cup and kicks it under a bench. The crowd cheers enthusiastically. Then the words "Life is a game. Bet at home dot com" are spoken and the sentence "Life is a game!" appears on the screen, along with a logo and the web address "bet-at-home.com". The website concerned offers sports betting services as well as various types of casino games and poker, some played for money and others not.

The BKS did not dispute that the law prohibits advertising for unlawful gambling services. However, it held that the main theme of the spot was an event that resembled football. The words on the screen did not promote gambling itself, but rather the "bet-at-home.com" Internet service. The BKS did not examine whether the betting services offered by this website were unlawful because the parties had not claimed that this was the case. On the contrary, the Senate ruled that the legality of the betting services available on the website was irrelevant because the ban on promoting illegal activities did not prohibit advertising for companies that offered some form of unlawful service linked only indirectly to the advertising spot concerned.

Ruling of the Bundeskommunikationssenat (Federal Communication Senate), 2 July 2007 (GZ 611.961/008-BKS/2007)

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