# [CH] Advertising within Sponsor References Unlawful

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In a ruling of 4 October 2007, the Swiss *Bundesverwaltungsgericht* (Federal Administrative Court - BVG) decided that the words " *Depuis 1775* " constituted advertising and therefore, as part of a trademark, should not appear in a reference to a sponsor (case no. A-563/2007).

In autumn 2006, Publisuisse SA (a subsidiary of the Schweizerische Radio- und Fernsehgesellschaft – SRG) refused to allow the company Montres Breguet SA to continue to appear as a sponsor of its programmes using its logo and the words " *Montres Breguet – Depuis 1775* ". The opinion that the reference to the company's year of foundation constituted advertising was subsequently confirmed by the *Bundesamt für Kommunikation* (Federal Communication Office – BAKOM). *Montres Breguet SA* lost its appeal on this decision to the BVG.

Art. 2 lit. o of the *Radio- und Fernsehgesetz* (Radio and Television Act – RTVG), which entered into force on 1 April 2007, defines sponsorship as the "participation of a natural or legal person in the direct or indirect financing of a programme with the purpose of promoting its own name, brand or image". Under Art. 12 para. 3 RTVG, sponsored programmes may neither "promote the conclusion of legal transactions concerning the goods or services of sponsors or third parties nor contain references of an advertising nature concerning goods and services". The court considered the words " *Depuis 1775* " to be product-related because they formed part of the official logo used by the sponsor to characterise its own products and services and to distinguish them from those of its competitors. It also thought that these words emphasised not only the company's age, but also the quality of its products on account of its wealth of tradition and experience. The court also explained that the sponsor reference would also be unlawful if the advertising element concerned only the company. It stated that sponsorship, like advertising, was subject, above and beyond the wording of Art. 12 para. 3 RTVG, to the basic principle of the separation of advertising and programme material, and therefore to the need for advertising to be recognisable. It should therefore not be used for direct or indirect advertising purposes. Art. 12 para. 3 RTVG prohibited not only advertising for a company's products and services, but also all forms of advertising in relation to sponsorship.

Referring to the plaintiff's claim, the BVG noted, in particular, that on account of the unambiguous provision of the RTVG, it was irrelevant whether, and to what extent, Swiss company law permitted advertising in trademarks.

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***Urteil des BVG vom 4. Oktober 2007 (Az. A-563/2007)***

http://relevancy.bger.ch/php/taf/http/checkpdf.php?filename=2007/a_00563_2007_2007_10_04_t.pdf&lang=de&type=azabvger

*Ruling of the BVG, 4 October 2007 (case no. A-563/2007)*

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