

[DE] VG Neustadt Confirms Existence of Surreptitious Advertising in Easter Show

IRIS 2008-5:1/7

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In a ruling of 15 February 2008, the *Verwaltungsgericht Neustadt* (Neustadt Administrative Court) upheld the decision of the *Landeszentrale für Medien und Kommunikation Rheinland Pfalz* (Rhineland-Palatinate State Media and Communications Agency - LMK), according to which the live programme "*Jetzt geht's um die Eier - Die große Promi-Oster-Show*", broadcast on 8 April 2006 on Sat.1, had violated the ban on surreptitious advertising, set out in Art. 1 para. 2 of the *Landesmediengesetz* (Land media act) in connection with Art. 7 para. 6 sentence 1 of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement) (see IRIS 2007-6: 9). During the programme, an oversized golden Easter rabbit with a red collar and the logo of the manufacturer had been shown, as well as advertising banners.

The company Sat.1 had argued, in particular, that it had not organised the programme itself. Rather, the programme had been organised and run by an event and marketing company, which had also been responsible for finding commercial partners.

The court held that Sat.1 was the correct recipient of the complaint, since it had been responsible for broadcasting the programme, thanks to the technical expertise of its production team. Regarding the disputed question of "intent to advertise", the court held, firstly, that the show should be treated as a commissioned production. Therefore, as the commissioning body, Sat.1 should have ensured that broadcasting regulations were met by means of appropriate contractual provisions. The court considered that its failure to do so suggested that there had been an "intent to advertise". Furthermore, advertising had been part of the overall concept of the event from the outset. The commercial references had neither been necessary for dramatic reasons nor unavoidable for information purposes. The court did not think the event could be compared with sports or cultural events at which similar advertising was common, since the programme had been devised, planned and organised from the outset for broadcast by the appellant. It considered that the oversized Easter rabbit, which had been shown for decorative purposes and the advertising nature of which had been reinforced by the advertising banners, had been designed to mislead viewers about the purpose of the programme.

Pressemitteilung der LMK (Nr. 9/2008) vom 6. März 2008

http://www.lmk-online.de/wirueberuns/presseseite/ansicht/article/lmk-medienaufsicht-geht-erfolgreich-gegen-schleichwerbung-vor-nr-09/243/?tx_ttnews%5BpS%5D=1202499117&cHash=817cc8890a

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