[GB] House of Lords Bans Advertisement as “Political”

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On 12 March 2008, the House of Lords announced its decision, upholding the view of the Broadcast Advertising Clearance Centre (now “Clearcast”), that an advertisement submitted on behalf of Animal Defenders International for broadcast clearance would infringe Section 321(2) of the Communications Act 2003, i.e. the prohibition on political advertising.

There was no disagreement that the content of the advertisement was inoffensive. It was intended as part of a campaign, entitled "My Mate's a Primate", which sought to draw the public’s attention to the exploitative (in ADI’s eyes) use of primates by humans, coupled with the threat to their survival. In part, it was a riposte to the use of a chimpanzee in a Pepsi Cola advertisement.

In enacting Section 321(2), the UK Parliament and its Joint Committee on Human Rights had regard to the decision of the European Court of Human Rights in VgT Verein gegen Tierfabriken v Switzerland (2001). Both bodies were aware that the UK legislation might fall foul of that case.

However, the impracticality of a more limited ban, in addition to the fear, noted as well in VgT, of “the annexation of the democratic process by the rich and powerful” persuaded the Government and Parliament that the law would be compatible with the Convention.

Essentially, the House of Lords decided to give more weight to the argument that “[T]he rights of others which a restriction on the exercise of the right to free expression may properly be designed to protect must…include a right to be protected against the potential mischief of partial political advertising” than was accorded to it by the European Court of Human Rights.

Furthermore, the House of Lords stated that there is a pressing social need for such a ban on television and radio (as compared to the press, cinema, etc), because of the “…greater immediacy and impact of television and radio advertising.” In addition, the lack of a European consensus on the matter led the House of Lords to accept that the United Kingdom had a wide margin of appreciation in this matter.

It should be noted that, although the House of Lords distinguished VgT v Switzerland from the instant case, this was on the basis of the 2001 decision. On

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4 October 2007, a second decision of the European Court of Human Rights on the same matter was published, again finding that the decision of the Swiss Federal Court constituted an infringement of VgT's Article 10 rights.

It remains to be seen whether ADI will file a complaint in Strasbourg.

The Communications Act 2003, Section 321

http://www.opsi.gov.uk/acts/acts2003/ukpga_20030021_en_30#pt3-ch4-pb16-l1g321

R (On The Application of Animal Defenders International) V Secretary of State For Culture, Media and Sport (Respondent)

http://www.bailii.org/uk/cases/UKHL/2008/15.html

" Campaign Groups remain Gagged: Lords Rule on Political advertising case"

http://www.ad-international.org/media_centre/go.php?id=1172&si=12&adisid=4a604c3cd099ee57bfc83a5c0e4ebbd4

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