[DE] Supreme Court Considers Nestlé's Collecting Programme Admissible

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In a ruling of 17 July 2008 (case no. I ZR160/05), the *Bundesgerichtshof* (Federal Supreme Court - BGH) decided on the admissibility of collecting programmes partly aimed at children and young people.

The case concerned an advertising campaign by the firm Nestlé. The company had printed points on the packaging of its chocolate bars. Every 25 points was worth EUR 5 at an Internet mail-order firm.

Since this advertising campaign was partly aimed at children and young people, the *Verbraucherzentrale Bundesverband e. V.* (Federation of German Consumer Organisations - vzbr) filed an injunction suit against Nestlé. The vzbr claimed that Nestlé's campaign violated competition law because it exploited children's enthusiasm for collecting and thus encouraged them to make irrational purchasing decisions.

Whereas the complaint was upheld in the first instance, the Frankfurt am Main Court of Appeal considered Nestlé's campaign to be compatible with the *Gesetz gegen den unlauteren Wettbewerb* (Unfair Competition Act - UWG). The BGH has now confirmed that decision.

It held that advertising campaigns that exploited the inexperience of young target groups and consumers were inadmissible under competition law because of the particular need to protect these groups. However, the BGH ruled that not every attempt to influence minors and not every collecting or loyalty programme aimed at young people was anticompetitive *per se*. Rather, its admissibility depended on its impact on young consumers with average levels of knowledge and awareness.

Since minors could understand the economic consequences of the collecting programme, since they were sufficiently familiar with the market for this kind of product, since the price of the product concerned had not been raised during the advertising campaign, since the prices involved had been kept within the financial capabilities of most young people, and since the terms and conditions of participation had been explained clearly to young people, the campaign did not violate competition law.

The provisions of the EC Unfair Commercial Practices Directive did not play a decisive role in the court's deliberations.

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http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=dcac8f9e99b14f59bc9a76bc28236646&client=%5B%2712%27%2C+%2712%27%5D&client=%5B%2712%27%2C+%2712%27%5D&nr=44563&linked=pm&Blank=1

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