[SE] Sponsoring Message Considered an Advertisement and Promotion of Commercial Interests in an Improper Manner

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On 16 February 2009, *Kammarrätten i Stockholm* (the Stockholm Administrative Court of Appeals) delivered a judgment regarding the promotion of a commercial interest in an improper manner in a sponsoring message. The case concerned the application of sections 6:4 and 7:8 of *Radio- och TV-lagen* (the Radio and Televisions Act - *RTL*). The RTL is based, *inter alia*, on Directive 89/552/ECC, as amended by Directive 97/36/EC.

Section 6:4 of the RTL states that programmes that are not advertisements may not promote commercial interests in an improper manner. Section 7:8 of the RTL stipulates that, if the cost of a non-advertising programme has been paid for in whole or in part by a party other than the person or entity conducting the broadcasting activities or producing audiovisual works (sponsored programmes), the identity of the sponsor shall be stated in an appropriate manner at the beginning or the end of the programme or both.

The programmes in question were the films “The Fellowship of the Ring” and “The Return of the King” broadcast by the Swedish nationwide television channel TV4 on 24 and 26 December 2006 respectively. Sponsoring messages were broadcast before and after each programme, as well as during the advertising breaks.

In brief, the sponsoring messages consisted of a speaker stating that “The movie is presented in co-operation with Eniro…” and then followed by statements such as “Search help via catalogue, Internet and telephone”. The URL eniro.se and Eniro’s logotype were shown in relation to the sponsoring messages.

Eniro is a company providing services allowing users to find such information as telephone numbers, addresses and directions to Swedish persons and companies.

Granskningsnämnden för radio och TV (the Swedish Broadcasting Commission - GRN) initiated proceedings against TV4 and ruled against the television channel, ordering that a special fee be imposed on TV 4 for the promotion of a commercial interest in an improper manner. The GRN claimed that the improper promotion consisted of the showing of the logotype and the URL related to Eniro’s services.

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TV4 appealed to *Länsrätten i Stockholms län* (the Stockholm County Administrative Court), but the court found in favour of the GRN. TV4 then took the matter to the Stockholm Administrative Court of Appeals.

Firstly, the Stockholm Administrative Court of Appeals found that, from the *travaux preparatoires* of the RTL, it follows that the legislator intended that sponsoring messages be considered as part of the programme that the message concerns. Therefore, section 6:4 of the RTL applies to such messages.

Moreover, the Administrative Court of Appeals established that by showing, in addition to the sponsor's name, substantial parts of the sponsor's business or products, the sponsoring messages go beyond what is required for information purposes according to section 7:8 of the RTL. These circumstances also meant that TV4 had acted in breach of section 6:4 of the RTL.

Consequently, TV4 was ordered to pay a fine of SEK 450,000.

TV4 has the possibility of appealing to the Supreme Administrative Court. It should be mentioned that a similar case is already pending before the Supreme Administrative Court (see IRIS 2008-3: 18), which has yet to decide whether TV4 will be granted the right to appeal in that case.

Kammarrätten i Stockholm, 2009-02-16, mål nr 4491-08, överklagat avgörande: Länsrättens i Stockholms län dom den 29 april 2008 i mål 14699-07

The Stockholm Administrative Court of Appeals, 2009-02-16, case nr 4491-08 , appealed judgment: Stockholm County Administrative Court's judgment 2007-12-03 in case nr 14699-07

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