[AT] Advertising Refusal Justified

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On 9 March 2009, the *Bundeskommunikationssenat* (Federal Communications Senate - BKS) decided that the refusal by *Österreichische Rundfunk* (Austrian broadcasting corporation - ORF) to sell advertising time to the operator of an online gaming platform was justified.

The plaintiff operates an online gaming platform under betting and gambling licences issued in Gibraltar. It had asked ORF to broadcast an advertising spot, which referred to its poker game. The spot contained the text: "You weak, boring, stupid idiot, if you can accept these insults, then you are damn well ready to play poker with us". ORF refused to broadcast the spot, citing the *Glücksspielgesetz* (Gambling Act).

The BKS did not consider this decision to constitute an infringement of the non-discriminatory allocation of advertising time. ORF was not obliged to break the laws to which it was subject by broadcasting advertising. Legitimate doubts about the lawfulness of the advertisement were sufficient to justify the refusal. Since the plaintiff did not have the licence required under Austrian law to organise poker games on the Internet, ORF might have committed an offence by broadcasting the advertising spot.

Restrictions on gambling could, in some circumstances, represent a violation of basic freedoms. However, since the Supreme Court had not taken any decision on the subject, ORF could not be expected to take the risk of being held liable for an offence.

Bescheid vom 9. März 2009 (Gz. 611.975/0001-BKS/2009)

http://www.bundeskanzleramt.at/DocView.axd?CobId=34242

Decision of 9 March 2009 (case no. 611.975/0001-BKS/2009)

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