[GB] Position in EPG Challenged

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JML, a home shopping television channel, contracted with Freesat (UK) Ltd to carry its programmes, JML and JML Cookshop services.

Freesat is owned jointly by the BBC and ITV. It is a platform which enables anyone owning a Freesat set-top box or a television with an inbuilt Freesat digital tuner access to digital satellite television (including HD television, radio and interactive services). Freesat is a not-for-profit company. Its GBP 9,000,000 income derives from shareholders and charging providers to have a presence on the platform.

Providers want to appear high up on the first page of the relevant category list in the electronic programme guide (EPG). JML was allocated channels 809 and 810. This meant that on the home shopping category page it appeared in the 10th and 11th position.

In general, the regulation of EPGs is prescribed by sections 310 and 311 of the Communications Act (2003). Section 310 enjoins Ofcom “…to draw up, and from time to time to review and revise, a code giving guidance as to the practices to be followed in the provision of electronic programme guides.”

Ofcom’s Code of Practice on Electronic Programme Guides sets out the best practice: “This Code sets out the practices to be followed by EPG providers:

a. to give appropriate prominence for public service channels;

b. to provide the features and information needed to enable EPGs to be used by people with disabilities affecting their sight or hearing or both; and

c.to secure fair and effective competition.”

JML argued in Court that the positioning it had been allocated was a breach of contract and that Freesat had failed to comply with both its own “Listing Policy” and the relevant Ofcom Code rules. It argued that Freesat had adopted a "haphazard, slipshod and highly subjective" method of allocating the channel positions. Freesats’ MD counter-argued that Freesat tried to ensure that “…that the best known and most watched services were placed in a prominent position in the EPG list".

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Mr Justice Blackburne rejected JML's claims. He was satisfied that the duty Ofcom's Code laid on Freesat, namely that it "publish and comply with an objectively justifiable method of allocating listings" was satisfied by Freesat's Listing Policy.

JML Direct Ltd v. Freesat(UK) Ltd

http://www.bailii.org/ew/cases/EWHC/Ch/2009/616.html

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