[BE] Flemish Regulator, Teleshopping and Advertorials

IRIS 2010-3:1/7

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At the end of 2009, the *Vlaamse Regulator voor de Media* (Flemish Regulator for the Media) issued several decisions regarding audiovisual commercial communications. Two of them will be addressed below.

In a decision of 23 November 2009 the Flemish Regulator imposed on MTV Networks Belgium a fine amounting to EUR 2,500 for multiple breaches of the regulation on teleshopping. The Regulator considered three programmes ('Hot or Not', 'Your Take Ringtone Chart' and 'Your Take') to be teleshopping programmes. According to Article 82, §1 (1) of the Flemish Media Decree 2009, these programmes have to be designated as such by means of visual and acoustic signals. The Regulator stated that merely showing the price and/or the way in which an order may be placed, or merely displaying a banner with the words 'subscription service' do not suffice to meet the obligation that such programmes should be clearly, both visually and acoustically, designated as teleshopping. In 'Hot or Not', the viewers were invited, via banners displayed during video clips, to make comments on photographs of other viewers. At the end of each clip, a verdict was announced as to whether a viewer was hot or not. As this voting process exerted no influence whatsoever on the choice or ranking of the video clips, the Regulator decided that, instead of an interactive application (as argued by the broadcaster), this activity was a mere sale of screen space that incorporated all the elements of teleshopping. There was no clear separation between the clips and the banners, which, the Regulator added, could have been established by merely using a split screen. In 'Your Take Ringtone Chart', during which 20 music videos were broadcast, banners mentioning special offers were displayed during the broadcast of 19 of these. Again, the Regulator judged that there was no spatial separation between the clips and the banners. Moreover, the programme was interrupted for the first time after only 12 minutes. According to Article 82, §1 (3) of the 2009 Decree however, teleshopping programmes without interruption should last at least 15 minutes. Finally, in 'Your Take', video clips were shown for several seconds, each time followed by the invitation to order the corresponding ringtone. Instructions on how to order were displayed via banners for a duration of several seconds. The Regulator also considered this to be a teleshopping programme that was not designated as such by visual and acoustic signals and that was not distinguishable from editorial content (Article 82, §1 (2), 2009 Decree). The Regulator considered the fact that the presentation was done

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by an external and unknown person and the fact that only parts of video clips had been displayed were not sufficient to meet the obligation to distinguish teleshopping from editorial content.

In a decision of 21 December 2009 the Regulator decided to caution the commercial broadcaster VMMa for breach of the regulation on advertorials. In between two programme announcements, an 'advertorial' was broadcast which lasted for two minutes and showed some fragments of the previously transmitted pre-selection process in the programme 'Idols'. During the last ten seconds a link was established with the new Polo manufactured by VW Golf. According to Article 81, §5 of the 2009 Decree, advertorials are commercial communications that last longer than advertisements, as the emphasis is on their editorial and informative content. As the Regulator judged that in this 'report' the emphasis was not on the editorial and informative content at all, it considered the 'report' to be a television ad. As a consequence, the maximum allowed percentage of broadcasting time for television ads and teleshopping ads within an hour had been exceeded (see Article 81, §2 Decree 2009, according to which '[t]he share of television ads and teleshopping ads may not exceed twenty percent per clock hour'). As in the relevant period two isolated ads had also been broadcast (which should remain an exception, see Article 79, §2 of the Decree 2009), the Regulator decided to impose a fine amounting to EUR 1.250.

ZAAK VAN VRMt. BVBA MTV NETWORKS BELGIUM (dossier nr. 2009/0493 + 2009/494) - BESLISSING nr. 2009/078, 23 november 2009

http://www.vlaamseregulatormedia.be/media/11831/2009-078.pdf

VRM v. BVBA MTV Networks Belgium, 23 November 2009 (No 2009/078)

ZAAK VAN VRMt. NV VLAAMSE MEDIA MAATSCHAPPIJ (dossier nr. 2009/0493) - BESLISSING nr. 2009/079, 21 december 2009

http://www.vlaamseregulatormedia.be/media/11946/2009_079.pdf

VRM v. NV VMMa, 21 December 2009 (No 2009/079)

Act on Radio and Television Broadcasting, 27 March 2009 (non official translation)

http://www.vlaamseregulatormedia.be/media/9726/newdecrees.pdf

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