[DE] Munich Appeal Court Upholds Information Claim against Aegis Media

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On 23 December 2009, the *Oberlandesgericht München* (Munich Appeal Court - OLG) upheld the company Danone's claim to information about the kick-back payments received by the media agency Aegis Media during the period of a contract between the two companies (case no. 7 U 3044/09).

The plaintiff had been using Aegis Media as its media agency for many years. As such, Aegis Media essentially managed the company's TV advertising budget and bought advertising slots from broadcasters. Under the contract between the two parties, all economic benefits that were neither part of the advertising fee nor the result of common market practice, but which the defendant received when purchasing advertising slots had to be forwarded to Danone.

The OLG decided that Danone had a right to information under Art. 666 of the BGB (Civil Code) in connection with the agency contract concerned. Aegis Media had to disclose information about the rebates and other benefits that it had received between 2003 and 2005 from TV broadcasters or their marketing companies with which advertising spots had been placed on behalf of Danone, particularly about rebates in kind ("free spots") and kick-back payments. This was the first time that the OLG had recognised the right of a media agency customer to information about the agency's kick-back payments.

The appeal judgment clearly states that there is no possibility of appeal against this ruling.

OLG München, Urteil vom 23. Dezember 2009, Az. 7 U 3044/09

Munich Appeal Court, ruling of 23 December 2009, case no. 7 U 3044/09

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