[BE] Commercial Broadcaster SBS Belgium Fails to Comply with Advertising Regulation

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On 22 March 2010, the Vlaamse Regulator voor de Media (Flemish Regulator for the Media) twice rapped the commercial broadcasting organisation SBS Belgium over the knuckles for breaches of various rules on advertising.

In the first decision, the Algemene Kamer (General Chamber) considered an allegation made by its research group according to which SBS Belgium had infringed the rule that the share of television advertisements and teleshopping advertisements may not exceed twenty percent of or 12 minutes per each clock hour (Article 81, §2 of the Media Decree). The total share of two advertising slots broadcasted within one hour amounted to 12 minutes and 17 seconds. SBS Belgium submitted that one of the advertisements, which concerned 'Médecins du Monde - Dokters van de Wereld' (freely translated, 'Doctors of the World') and lasted 25 seconds, should not be seen as advertising, but rather as a public service announcement (PSA). The Regulator accepted this defence, arguing that the advertisement in question emanated from a humanitarian association and therefore corresponded with the definition of PSA, as formulated in Article 2, 3(b) of the Flemish Media Decree. In other words, the allowable share of advertisements had not been exceeded. However, Article 46 of the Decree stipulates that PSAs should be clearly identified and differentiated from regular programming. With regard to television programmes, this means that PSAs must be preceded and followed by a suitable announcement (2nd clause). SBS Belgium had failed to do this, and therefore, taking into account the broadcaster's willingness to take the necessary measures in order to avoid repetition, the Regulator decided to caution SBS Belgium because of this infringement.

The second decision concerned the illegitimate transmission of a television advertisement. On the broadcasting programme VT4, a 'single spot' was shown that featured the presenters holding a New Year's Eve party, while one of them entered the room with a bottle of Martini. At the end, a voice-over stated, "VT4 en Martini Brut wensen je bruisende feesten" (freely translated, "VT4 and Martini Brut wish you delightful holidays"). According to SBS Belgium, this spot was to be viewed as self-promotion, sponsored by Martini. The General Chamber, however, judged this spot to be an advertisement in favour of Martini. The message via voice-over and the clear display of the bottles and logo of Martini Brut gave this spot the character of advertising. Article 79, §1 of the Media Decree stipulates

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that television advertising, excluding self-promotion, should be clearly identifiable and easy to differentiate from editorial content. In this regard, it should be kept quite distinct from other parts of the programme by visual, and/or acoustic, and/or spatial means (1st clause). As SBS Belgium had failed to meet this obligation, the Regulator decided to impose a fine amounting to EUR 5,000.

ZAAK VAN VRM t. NV SBS BELGIUM (dossier nr. 2010/0507) BESLISSING nr. 2010/018 22 maart 2010

http://www.vlaamseregulatormedia.be/media/12646/2010-018.pdf

VRM v. NV SBS Belgium, 22 March 2010 (No. 2010/018), available at:

ZAAK VAN VRM t. NV SBS BELGIUM (dossier nr. 2010/0508) BESLISSING nr. 2010/019 22 maart 2010

http://www.vlaamseregulatormedia.be/media/12659/2010-019.pdf

VRM v. NV SBS Belgium, 22 March 2010 (No. 2010/019)

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