[BE] Flemish Broadcasters Keep Violating New Regulation on Product Placement

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Once again, the *Vlaamse Regulator voor de Media* (Flemish Regulator for the Media - monitoring and enforcement of media regulation) has rendered decisions relating to forbidden product placement. Although the two cases both present similar facts, only the first decision, against the commercial broadcaster VMMa, is explicitly grounded in the regulation on product placement. The second, against the public broadcasting corporation VRT, concerns a radio programme, hence the new regulation on product placement is not applicable in this case (see Article 98 of the new Flemish Media Decree).

On 26 April 2010, the Flemish Regulator considered a report that was broadcast as part of the programme 'Spotlight' on VMMa. The report exclusively focused on the opening of a new fashion store, called 'Sissy-Boy', and continually mentioned and depicted this new commercial establishment. The Regulator held that the location was obviously chosen by and placed at the disposal of the broadcasting organisation in order to obtain a favourable and complimentary report on the new store. Therefore, there is no doubt that this cooperation was a form of production aid (Article 99, §2 of the Media Decree), a type of product placement that is allowable only within certain limits. According to the Regulator, the representation exclusively portrayed 'Sissy-Boy' in an attractive way. Moreover, the comments accompanying the report were without exception full of praise. The presenter showed the store's complete range of products (clothing, beauty products, etc.) and exclusively expressed herself in superlatives ('shop sensation', 'fantastic', 'unique', 'lovely', etc.). For these reasons, the Regulator decided that VMMa had violated the limits of acceptable attention that can be directed at a product in an audiovisual media service. As a consequence, the product had benefited from undue prominence, in breach of Article 100, §1, 3° of the Flemish Media Decree. Moreover, the Regulator held that such purely promotional presentation of the fashion store amounted to a direct encouragement to visit the new establishment, in breach of Article 100, §1, 2° of the Media Decree. It eventually imposed a fine of EUR 5,000 (see IRIS 2010-7: 1/7 for a very similar case).

On 17 May 2010, the Regulator's attention was directed to a radio programme on MNM, a radio station that is part of the public broadcasting corporation VRT, which was transmitted live from a new 'Starbucks' establishment. The programme again focused on the opening of a new commercial establishment, continually

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mentioning the particular brand of the product sold. Once again, the Regulator considered that the location was obviously chosen by and placed at the disposal of the broadcasting organisation in order to bring the opening of this new store to the listeners' attention and, at the same time, promote a positive attitude towards the brand, amplifying the commercial nature of this programme. In return, the VRT was given access to all facilities in the establishment, which can be viewed as compensation in the form of production aid. Hence the Regulator decided that the programme contained commercial communication, as the sounds transmitted by the station were designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity (Article 2, 5° of the Flemish Media Decree). By integrating these sounds as a form of commercial communication in the editorial content of a programme itself, the VRT disrespected the obligation that commercial communication must be easy to identify as such (Article 53 of the Media Decree). As a consequence, the Regulator imposed a fine of EUR 7,500.

ZAAK VAN VRM t. NV VLAAMSE MEDIA MAATSCHAPPIJ (dossier nr. 2009/0498) BESLISSING nr. 2010/027 26 april 2010

http://www.vlaamseregulatormedia.be/media/13042/2010-027.pdf

VRM v NV VMMa, 26 April 2010 (No 2010/027)

ZAAK VAN VRM t. NV VLAAMSE RADIO- EN TELEVISIEOMROEPORGANISATIE (dossier nr. 2010/0513) BESLISSING nr. 2010/028 17 mei 2010

http://www.vlaamseregulatormedia.be/media/13050/2010-028.pdf

VRM v NV VRT, 17 May 2010 (No 2010/028)

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