[AT] BKS Rules on Unlawful Product Promotion in ORF Programme

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Peter Matzneller
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 22 November 2010, the Austrian Bundeskommunikationssenat (Federal Communications Office - BKS) issued a decision on the classification of unlawful product promotion in a television programme in response to a ruling of the Austrian Verwaltungsgerichtshof (Administrative Court - VwGH) of 8 October 2010, overturning an earlier BKS decision (case no. 611.941/0002-BKS/2006) on the grounds that its content was unlawful.

The case concerned a report in a programme broadcast by Österreichischer Rundfunk (ORF) about food for overweight dogs, which contained a 6-second panning shot showing various products. These products clearly belonged to a certain brand, as indicated by the company logo and colour. The end titles of the programme included a reference to the manufacturer as the programme sponsor.

In its first decision in April 2006, the BKS had classified the shot as advertising and found ORF guilty of breaching the rules on separation of advertising and programme material. The VwGH held that, in doing so, the BKS had failed to check the existence of product placement or whether sponsorship rules had been infringed (ban on inciting viewers to buy the sponsor's products).

After reviewing the facts of the case in accordance with the VwGH's instructions, the BKS has now concluded that the explicit, very clear depiction of the branded products was specifically designed to encourage uninformed, undecided viewers to buy them. This impression was further strengthened by the positive comments made by the presenter at the time. The images therefore represented direct incitement to buy the products and breached Article 17(2)(3) of the version of the ORF-Gesetz (ORF Act - ORF-G) that was in force at the time of the ruling.

The BKS decided that this was not an example of product placement. In view of the corresponding advertising fees for the nearest advertising break, it calculated a fictitious fee of EUR 510 for the 6-second shot, which was below the lower limit of EUR 1,000 applied by the VwGH. This was not, therefore, a case of product placement in the sense of Article 14(5) ORF-G.

Bescheid des BKS vom 22. November 2010 (GZ 611.941/0003-BKS/2010)

http://www.bundeskanzleramt.at/DocView.axd?CobId=41664

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BKS ruling of 22 November 2010 (case no. 611.941/0003-BKS/2010)

Erkenntnis des VwGH vom 8. Oktober 2010 (ZI. 2006/04/0089/-6)

http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2006040089_20101008X00

VwGH decision of 8 October 2010 (case no. 2006/04/0089/-6)

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