# [AT] Federal Communications Board Rules on Surreptitious Advertising

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On 26 January 2011 the Bundeskommunikationssenat (Federal Communications Board - BKS) decided that the programme “Von Römern, Wein und heißen Quellen” (“About Romans, wine and hot springs” in the “Erlebnis Österreich” (“Experience Austria”) series on the Romanisation of Styria, early wine-growing in the region and the use of thermal springs did not constitute surreptitious advertising within the meaning of section14(2) of the ORF-Gesetz (Law on the Austrian Broadcasting Corporation - ORF-G) in the version applicable when the programme was transmitted.

In order to explain the change in the use of hot springs, the programme concerned showed and described, among other things, some of the services available at the Bad Waltersdorf medicinal springs. In addition to panned camera shots of the complex showing visitors using a water massage mushroom and a water slide and engaging in water gymnastics, a narrator mentioned some of the services provided by the spa, such as so-called “alpha loungers”, a “Roman sweat room” or a “salinarium”. In the accompanying narration, the terms “wellness oases” and “wellness temple”, “wellness concept” and “well-being” were used. The closing credits referred to the “kind support” of the East Styria Regional Tourism Association and showed its logo.

In contrast to the previous decision taken by the lower authority, the broadcasting regulator KommAustria, the BKS concluded in its examination of the case that the pictures of the springs and the accompanying explanations did not constitute surreptitious advertising within the meaning of the ORF-G. The terms employed in the context of the comparison drawn with the Roman period did not particularly stand out, so there was no evidence of any failure to observe the requirement of impartiality. There was also no indication that the other film sequences were specifically likely to persuade undecided viewers to use the services of that particular spa as it could not be gathered from that footage that the services were being given particular prominence. Furthermore, the narrator’s references to some of the spa services did not have any specific effect in terms of sales promotion.

With regard to the likelihood of the description being misleading, the BKS stated that the average consumer would not necessarily assume from the title “About Romans, wine and hot springs” that the programme would exclusively deal with

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historical details or factual information about wine production and the use of thermal waters. He or she would therefore hardly be surprised at also being informed about the individual services available from a spa in a programme dealing with such a general subject.

### *Bescheid des BKS vom 26. Januar 2011 (GZ. 611.009/0021-BKS/2010)*

http://www.bundeskanzleramt.at/DocView.axd?CobId=42332

*BKS decision of 26 January 2011 (Ref. 611.009/0021-BKS/2010)*

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