[FR] Referring Viewers to a specific Social Network Constitutes a Form of surreptitious Advertising

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The *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body - CSA) received an application from a television channel on the admissibility of referrals to the pages dedicated to its programmes on a number of social network sites under the regulations on advertising. Indeed happens frequently that a television channel or radio station refers viewers or listeners to the pages devoted to its programmes on a number of social networks including Facebook, or invites them to react on the Twitter social network. In a decision adopted on 12 April but not made public until 27 May, the CSA replied that the practice consisting of referring viewers to a social network without giving its name was informative. On the other hand, referring them to a specifically named network took on an advertising aspect. There was a commercial company behind the network, and its name was registered as a brand name. The practice therefore contravened the provisions of Article 9 of Decree No. 92-280 of 27 March 1992, which lays down the general principles defining the obligations incumbent on editors of services in respect of advertising, sponsorship and tele-shopping. According to these provisions, “Surreptitious advertising is not allowed. (...) Surreptitious advertising comprises the verbal or visual presentation of goods, services, the name, the brand name or the activities of a producer of goods or a provider of services during programmes where such presentation is made for advertising purposes.”

The parties concerned, headed by the television channels, as well as a large number of commentators, both French and of other nationalities, have severely criticised both the decision and the position adopted by the regulator, which are considered archaic. To such an extent that the CSA, “in order to dissipate the misunderstanding”, went on to publish on 6 June the full text of the letter it had sent to the channels. Christine Kelly, advisor to the CSA, added her own justification: “We encourage the use of social networks - it is not a matter of blocking them. CSA members spend hours on them. We are merely emphasising that what should be said is ‘find us on the social networks’ rather than ‘find us on Facebook’”, she added, stressing that there are other social networks. “Favouring one over the others distorts competition.” For Michel Boyon, Chairman of the CSA, “If the CSA had adopted the opposite position, there’s no doubt that any of the other social networks would have had a case against us before the Conseil d’Etat.” But he did wonder, “The time seems to have come for the Government and Parliament to embark on consideration with the bodies and professionals concerned - should the regulations on advertising on the audiovisual media,

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particularly as regards referring to products, services and brands by name, not evolve in keeping with the transformations that are affecting technologies and society?" That is the question.

Renvoi sur les pages des réseaux sociaux : analyse du Conseil, 12 avril 2011

http://www.csa.fr/actualite/decisions/decisions_detail.php?id=133542

CSA Analysis, 12 April 2011

Renvoi sur les pages des réseaux sociaux : le CSA publie la lettre envoyée aux chaînes, 6 juin 2011

http://www.csa.fr/actualite/communiques/communiques_detail.php?id=133577

Publication of the CSA Letter sent to TV Channels, 6 June 2011

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