Court of Justice of the European Union: Eleftheri Tileorasi v. Ethniko Simvoulio Radiotileorasis

IRIS 2011-8:1/5

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On 9 June 2011 the Court of Justice delivered its judgment in the case between a Greek broadcasting company (Ελεύθερη Τηλεόραση - Eleftheri Tileorasi) and the Greek Εθνικό Συμβούλιο Ραδιοτηλεόρασης (National Council for Radio and Television - ESR)

Eleftheri Tileorasi owns and operates a private channel called 'ALTER CHANNEL'. In November 2003 Eleftheri Tileorasi broadcast a programme that contained a presentation of a cosmetic dental treatment. The programme included shots of before, during and after the treatment. Furthermore, the programme provided information about the efficacy and the costs of the treatment. The ESR imposed a fine of EUR 25,000 on Eleftheri Tileorasi on the ground that the television programme contained surreptitious advertising. Eleftheri Tileorasi lodged an action for annulment of the decision before the Greek Council of State (Συμβούλιο της Επικρατίας - Simvoulio tis Epikratias). The Council subsequently referred a question to the Court on whether the Television without Frontiers Directive must be interpreted as meaning that the provision of payment or of consideration of another kind is a necessary condition for establishing the intentional nature of surreptitious advertising (see IRIS 2010-4/28).

Firstly, the Court emphasised that the aim of the Directive is to ensure that the interests of consumers as television viewers are fully and properly protected. It continues by stating that in order to meet that objective, it is essential for television advertising to be made subject to a certain number of minimum rules and standards.

The Court pointed out that the decisive element in surreptitious advertising is that it must be intended by the broadcaster to serve advertising. Referring to the definition of surreptitious advertising in the Directive and the purpose of the Directive, the Court stated that the mention of payment in the definition is an indication of an intention to advertise, but not a necessary condition. Thus the fact that no payment is made does not mean that there is no surreptitious advertising.

The Court pointed out that another interpretation could run the risk of depriving the provision of its effectiveness, since it could be difficult or maybe even impossible to prove that payment or of consideration of another kind has been

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provided in exchange for the advertisement. Advertising that nevertheless displays all the characteristics of surreptitious advertising could thus then not be prohibited. The Court emphasised that this could undermine the interests of television viewers. The Court therefore concluded that Article 1(d) of the Television without Frontiers Directive is to be interpreted as meaning that the provision of payment or of consideration of another kind is not a necessary condition for establishing the element of intent in surreptitious advertising.

Case C-52/10, Alter Channel and Konstantinos Giannikos v. Ipourgos Tipou kai Meson Mazikis Enimerosis and Ethniko Simvoulio Radiotileorasis, 9 June 2011

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