[AT] BKS Rules on Labelling Obligation for Sponsored Programmes

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On 12 October 2011, the Austrian Bundeskommunikationssenat (Federal Communications Board - BKS) partially overturned a decision of the Kommunikationsbehörde Austria (Austrian Communications Authority - KommAustria) against Österreichischer Rundfunk (Austrian public service broadcaster - ORF) and ended a dispute between the regulatory body and the public service broadcaster concerning the labelling of sponsored programmes.

In its decision of 14 June 2011, KommAustria had found ORF guilty of breaching the provisions on labelling of sponsored programmes contained in Article 17 of the ORF-Gesetz (ORF Act) in a sports programme (men's downhill at the 2011 World Ski Championships). Since the three-part broadcast comprising previews, live race coverage and subsequent analysis should have been considered as a single programme, the sponsor references that ORF had made before and after the actual event had infringed the ORF-Gesetz; in conjunction with the case law of the Austrian Verwaltungsgerichtshof (Administrative Court), the ORF-Gesetz required such references to be made at the beginning and end of a sports programme that formed an integrated whole.

In addition, it had ruled that ORF, by adding a further sponsor's reference in the advertising break between two starting groups in the race, had breached Article 17(1)(2)(2) ORF-Gesetz, which prohibited sponsorship references during a programme.

ORF appealed against this decision. Regarding the first part of the ruling, it told the BKS that the programme in question should not have been considered as a sponsored programme in the sense of Article 17 ORF-Gesetz. The spots concerned could not be defined as sponsorship references just because they contained words such as "... presents" or "... hopes you enjoy the programme", since references to programmes were not prohibited in an advertising spot. Since the promotional nature of the spots demonstrated that their purpose was to promote sales for the companies concerned, only the provisions on television advertising should apply.

Responding to the second part of the ruling, ORF explained that Article 17(1)(2)(2) ORF-Gesetz did not concern the broadcast of advertising in the form of sponsor

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references during a commercial break. In ORF's opinion, it also applied to sponsor references without an advertising element, since it would be contradictory to allow sponsor references with an advertising element while at the same time prohibiting the broadcast of those without such an element during a commercial break.

In its decision, the BKS rejected ORF's appeal against the first part of the ruling and held that a sponsor reference contained in an advertising spot was sufficient for the broadcast concerned to be classified as a sponsored programme, and therefore be subject to the programme labelling requirement. As KommAustria had correctly pointed out, ORF had failed to meet this requirement.

In relation to the second part of the ruling, however, the BKS agreed with ORF. According to the ORF-Gesetz, so-called "cut-in advertising" was advertising that interrupted a programme. Therefore, sponsor references that were broadcast during a commercial break that was separated from the programme should not be categorised as sponsor references during a programme, within the meaning of Article 17(1)(2)(2) ORF-Gesetz.

Entscheidung des BKS vom 12. Oktober 2011 (GZ 611.009/0004-BKS/2011)

http://www.bundeskanzleramt.at/DocView.axd?CobId=45175

BKS decision of 12 October 2011 (GZ 611.009/0004-BKS/2011)

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