[AT] BKS Treats Sponsor Logo Wall in Sports Broadcasts as Product Placement

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In a decision of 14 December 2011, the Austrian Bundeskommunikationssenat (Federal Communications Board - BKS) commented on the character of sponsor logo walls and sew-on badges worn by experts in sports broadcasts and ruled that unlawful product placement had taken place in a specific case.

The case concerned the broadcast of a football match by Österreichischer Rundfunk (Austrian public service broadcaster - ORF). During the pre-match coverage from the stadium concerned, the presenter interviewed a football expert. One camera shot showed the expert in front of a transparent wall displaying four colourful logos of four different brands. In addition, two other company logos were pictured, covering a large area (8 x 5cm and 7 x 3cm) of the expert's jacket. On average, these logos covered a total of 50%-60% of the screen. The same shot was used during the half-time and post-match analysis. In all, the company logos were visible for more than five minutes. At the start of both the pre-match coverage and the match itself, the broadcaster displayed the message "P - supported by product placement" at the top of the screen.

In its assessment, the BKS agreed with the decision of the Kommunikationsbehörde Austria (Austrian Communications Authority - KommAustria) of 18 October 2011, which stated that product placement had taken place and that the brands had been given excessive prominence. Although ORF agreed that the logos on the expert's jacket constituted product placement, it disputed this in relation to the logo wall. ORF argued that interview positions in the stadium depended firstly on its contract with the Bundesliga and secondly on the stadium rights of the club concerned, which was also responsible for the layout of the official logo walls. Regardless of that, however, ORF claimed that neither the Bundesliga nor the football clubs had an influence on the actual inclusion of logos in ORF programmes. ORF did not receive any payment or any other remuneration in return for conducting interviews in front of a logo wall.

Referring to KommAustria's decision, the BKS disagreed with ORF's argument. The sole purpose of the aforementioned contractual provisions was to ensure that the relevant logos were actually included in a broadcast. According to the BKS, it was therefore by definition a case of product placement in the form of inclusion of brands in a broadcast in return for payment or a similar service.

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ORF also disputed KommAustria's view that the display of the logos had not been justified on either dramatic or editorial grounds. When drawing up this criterion, KommAustria had referred, inter alia, to the relevant guidelines of the German Landesmedienanstalten (Land media authorities). ORF argued that the relevant provision of the current ORF-Gesetz (ORF Act) no longer required such a dramatic or editorial justification, in contrast to a previous version ("necessary"). It said that KommAustria had therefore unlawfully reconstructed a criterion which had been deliberately removed by the legislature during a reform of the Act.

This argument did not convince the BKS. The view that a dramatic or editorial justification could be used to assess whether a brand had been given excessive prominence was directly supported by the origins of the provision of the EU Audiovisual Media Services Directive (2010/13/EU) in connection with the European Commission's interpretative communication of 28 April 2004 on certain aspects of the provisions on televised advertising.

The BKS also agreed with KommAustria's opinion on the intensity of the sponsors' logos and explained that the logos on the expert's jacket and the sponsors' wall had been presented in an extremely prominent and striking manner on account of their excessive size and the length of time for which they had been visible during the interview and commentary scenes. The logos had therefore been given excessive prominence, infringing the relevant provisions of the ORF Act.

Entscheidung des BKS vom 14. Dezember 2011 (GZ 611.009/0007-BKS/2011)

http://www.bundeskanzleramt.at/DocView.axd?CobId=46091

BKS decision of 14 December 2011 (GZ 611.009/0007-BKS/2011)

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