[BE] Flemish Commercial Broadcaster Does Not Infringe Teleshopping Provisions, But Offers an Interactive Service

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Katrien Lefever
iMinds - ICRI - KU Leuven

During the programme ‘Kill the Clip’ on TMF, a Flemish commercial broadcaster, 5 video clips are broadcast. During these video clips the following banner is shown: ‘Keep the clip…Kill the clip’ ‘You decide SMS KILL or KEEP to 3373 (EUR 0,60/SMS)’. Vlaamse Regulator voor de Media (Flemish Media Regulator - VRM.) had to examine whether such a service should be labeled as teleshopping. Art. 2, 45° Mediadecreet (Flemish Broadcasting Act) defines teleshopping as “direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment”. If this service was labeled as teleshopping, VRM had to examine whether the teleshopping spot was readily recognizable and distinguishable from editorial content (Art. 79 Flemish Broadcasting Act).

According to the Flemish broadcaster, this service should not be classified as teleshopping, but as an interactive service. The interactive service works as follows: When a video clip starts, the viewers can send an SMS with the message ‘kill’ or ‘keep’. If six viewers have texted ‘kill’ a little box will move to the red zone of a bar. If this box stays 15 seconds in this red zone, the clip will be interrupted, the message ‘you killed the clip’ will be shown and a new video clip will start.

According to VRM the main feature of teleshopping is the broadcast of a direct offer made with the intent to supply products or services in return for payment. The viewer should be enabled, via the indication of a price and contact details, to respond directly to the offer and place an order by phone, email, fax or mail. In the past, VRM has often classified SMS games as teleshopping. In those cases, banners were shown during video clips asking the viewers to send an SMS to find out whether they would stay together with their partner or what the name of their first born baby would be. Given that the answers appeared in a banner on the screen, VRM decided that the viewers bought a part of the screen and, thus, that these SMS games should be labeled as teleshopping. However, the main difference between those SMS games and ‘Kill the Clip’ is that during the latter programme, viewers do have a real impact on the content of the programme. As a result, VRM agreed that this programme should not be classified as a teleshopping programme, but as an interactive service. This implies that Article 79 of the Flemish Broadcasting Act does not apply to this programme. Additionally, VRM stressed that broadcasters are not allowed to limit the level of

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interactivity of an SMS game by using a set of filters, such as the number of text messages that should be sent before something happens, or a time limit within a specific number of text messages should be sent.

VMMa t. MTV Networkds, Beslissing 2012/001

http://www.vlaamseregulatormedia.be/media/18118/2012-001.pdf

VMMa v. VRT, Decision 2012/001, 18 January 2012

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