[AT] Naming of Lottery in Competition: Product Placement but Not Surreptitious Advertising

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In a decision of 5 November 2012, the Austrian Bundeskommunikationssenat (Federal Communications Senate - BKS) explained the difference between surreptitious advertising and product placement in a radio competition.

The case concerned a competition organised over several days by the radio station Ö3 and based heavily on the state lottery. On the days of the relevant broadcasts, presenters drew a total of 12 bonus numbers, always just before the hourly news bulletin. Listeners were urged to see if the numbers were on their lottery tickets, which could be up to six months old. After the news bulletin, the 33rd caller with the right bonus number was put through to the programme and won a cash prize of EUR 5,000.

Several people complained to the Kommunikationsbehörde Austria (Austrian Communications Authority - KommAustria) about the competition, claiming that the Austrian public service broadcaster Österreichische Rundfunk (ORF) had violated the ban on surreptitious advertising enshrined in Article 13(1) of the ORF-Gesetz (ORF Act - ORF-G) by broadcasting it on the radio station Ö3.

However, in its decision of 14 August 2012, KommAustria referred to the rules on product placement. In its opinion, ORF had infringed Article 16(5)(4) ORF-G by failing to mention clearly the use of product placement at the start and end of the competition. Both parties appealed to the BKS against this decision. They criticised the fact that KommAustria had “only” taken into account the use of product placement without a suitable warning, but had failed to find the broadcaster guilty of unlawful surreptitious advertising. ORF defended itself against the allegation of inadequate labelling and argued that the acoustic signal that was usually used to denote the separation between advertising and programme material was also sufficient to fulfil its obligation to label product placement.

The BKS rejected both appeals and ruled, firstly, that KommAustria had exhaustively explained why it thought this was not a case of surreptitious advertising. The presenters’ comments concerning the broadcast had not been likely to encourage a previously uninformed and undecided average listener to take part in the State lottery. The description of the competition and prizes had

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neither given excessive prominence to the offer of goods and services nor strongly urged listeners to participate.

Concerning ORF's argument, the BKS found that there was a substantial difference between labelling and separation requirements. Product placement labelling was designed to inform the listener that, at some point during the programme, products or services would be mentioned for non-editorial reasons. In order to avoid misleading listeners, the use of an acoustic signal was therefore insufficient to qualify as "clear" labelling.

Entscheidung des BKS vom 5. November 2012 (GZ 611.804/0002-BKS/2012)

http://www.bundeskanzleramt.at/DocView.axd?CobId=49452

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