[AT] Promotional Sponsor References Constitute Advertising and Must Therefore be Separated from Programme Material

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Peter Matzneller
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a decision of 5 November 2012, the Austrian Bundeskommunikationssenat (Federal Communications Senate - BKS) confirmed that a sponsor reference that was excessively promotional in nature should be separated from the preceding programme by optical, acoustic and spatial means, in accordance with the rules on “traditional” television advertising.

The decision concerned a reference to a photography studio as sponsor of a programme broadcast by Burgenländisches Kabelfernsehen (BKF). The reference was accompanied by the following spoken text: “Steve Haider photography, your partner for modern corporate and wedding photography and dynamic portraits, hopes you enjoy the following programme.”

The lower-instance authority, Kommunikationsbehörde Austria (Austrian Communications Authority - KommAustria) had considered the sponsor reference likely to persuade previously uninformed or undecided viewers to purchase the sponsor’s products and services. It should therefore be considered as advertising in the sense of Article 2(40) of the Audiovisuelle Mediendienste-Gesetz (Audiovisual Media Services Act - AMD-G), but had not been separated from the preceding programme under the terms of Article 43(2) AMD-G, which required the separation of programme material and advertising.

BKF appealed to the BKS against this decision, arguing that a neutral reference to or description of a product should be considered admissible and that the boundary between a reference to a sponsor and advertising was only crossed if positive value judgments were made or specific features of the product or service emphasised.

The BKS rejected the appeal and agreed with KommAustria’s reasoning. This was not a case of a simply “neutral” reference or objective information. The use of the term “modern” in connection with corporate and wedding photography was a value judgment, since it would give the average viewer the impression that this company provided a state-of-the-art photography service from both the artistic and technical points of view, and portrayed companies and weddings in a contemporary way.

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The mention of “dynamic portraits” could also, in accordance with case law, not be considered neutral information. The average customer would not consider the term “dynamic” to be a purely objective description of a particular product group, but as an adjective with a positive meaning in the sense of “energetic”, as opposed to “rigid” or “static”.

Since this was therefore a form of advertising, it should have been clearly separated in a manner likely to indicate to the viewer that advertising was about to be shown. Rather than meeting this requirement, the promotional sponsor reference, broadcast during the programme without any optical or acoustic separation from the editorial content shown immediately beforehand, had formed an integral part of the BKF programme.

Entscheidung des BKS vom 5. November 2012 (GZ 611.001/0002-BKS/2012)

http://www.bundeskanzleramt.at/DocView.axd?CobId=49456

BKS decision of 5 November 2012 (GZ 611.001/0002-BKS/2012)

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