# [NL] Dutch Public Broadcaster Fined for Infringing Limitations on Commercial Promotion

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In 2009 and 2010, the Dutch public service broadcaster Omroepvereniging Tros aired the children's television series “Het Sprookjesboomfeest”. On 28 June 2011, the Commissariaat voor de Media (the Dutch Media Authority - CvdM), imposed a fine of EUR 120,000 for non-compliance with the Dutch Media Act, the Mediawet 2008 (Mw). According to the CvdM, Omroepvereniging Tros had infringed the principle of non-commerciality by being servant to the profits of commercial third parties (Article 2.141(1) Mw) and by acting in conflict with the sponsor rules for public service broadcasters (Article 2.89(1)(b) Mw). By broadcasting “Het Sprookjesboomfeest”, Omroepvereniging Tros was being servant to and promoted goods of the amusement park “De Efteling”, because the park had developed an attraction and a musical, both called “Sprookjesboom”.

Omroepvereniging Tros raised objections against the judgment, which were rejected by the CvdM, after which Tros appealed the decision before the District Court of Amsterdam. On 14 November 2012, the District Court affirmed, to a great extent, the decision of the CvdM. First, since Omroepvereniging Tros had failed to impose contractual limitations on the amusement park’s abilities to make use of the fame of the brand “Sprookjesboom” that had been acquired through the television series, the court presumed that the public broadcaster was servant to the profits of De Efteling, which is prohibited by Article 2.141(1) Mw. According to the court, Omroepvereniging Tros had failed to rebut this presumption. Second, by using the name “Sprookjesboom” or “Sprookjesboomfeest” in the television series, Omroepvereniging Tros might have encouraged consumers to buy and use (forthcoming) articles and services related to the amusement park’s brand “Sprookjesboom” and the amusement park itself, which is a violation of Article 2.89(1)(b) Mw. The court, however, did not agree with the CvdM’s arguments concerning the musical performances, because the first series of performances ended before the television series had started, and the second series started several months after the end of the television series. Thus, the decision of the CvdM was affirmed, but the fine was reduced to EUR 108,000.

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http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BY3391

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*Judgment of the District Court of Amsterdam, AWB 12/2446 WET - Omroepvereniging Tros v. Commissariaat voor de Media, 14 November 2012*

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