[SK] Promotion of a Slovak Film

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The Council for Broadcasting and Retransmission of the Slovak Republic ("Council") in April 2012 imposed a fine of EUR 497 on the (radio) public service broadcaster (PSB) for failing in its obligation to clearly separate (by acoustic means) advertising from editorial content. Although the present case concerned a radio station, its outcome may also be applied to audiovisual media, since the separation obligation is also valid for the latter.

The PSB aired a short message about a new Slovak film. The spot contained short extracts from the film along with the date of its premiere. It also introduced the main characters in a quite promotional manner, e.g., "Holder of the Czech lion (Czech version of the Oscar) Miroslav Krobot is a father…Breakout actress of this season Judith Bárdos plays the rebellious daughter…." and pointed out that the film was the "most award-winning film of this season". The PSB claimed that the message did not promote the actual film itself, but merely informed the public about the existence of a new Slovak film. According to the PSB, such a broadcast represents the "creative" way of fulfilling its obligation to promote Slovak culture, specifically Slovak film.

The Council disagreed with the PSB and stated that the message contained clear promotional references. Thus, its purpose was not merely to inform the public of the film's existence, but, on the contrary, its aim was to increase the size of this film's cinema audience. The spot therefore met the definition of advertising and should have been clearly separated by acoustic means from the editorial content.

The PSB filed an appeal before the Supreme Court stating the same arguments. The Court cancelled the decision and stated that "at given stage of the process [in view of the given reasoning] it cannot agree with Council that the spot fulfils the definition of advertising". The Supreme Court stressed that the Council did not pay enough attention to the "contradiction" between PSB's obligation to promote Slovak culture, e.g. Slovak film, and the restrictions on advertising (that applies to all broadcasters). In the Court's opinion, the Council did not answer the substantial question whether PSB may broadcast the spot devoted to Slovak film to fulfill its remit without breaching advertising rules.

On 4 December 2012, the Council adopted another decision in regard to this matter with the same result (a fine of EUR 497). The Council stated that the

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necessity for the PSB to follow the rules on advertising to the same extent as any other (commercial) broadcaster is essential in order to ensure a level playing field in the broadcasting sector. It is not the role of the Council to determine what the most suitable ways to promote Slovak film are, but when doing so, the PSB must abide by the existing rules on advertising.

The Council also stressed that it considers media coverage as a key issue in the positive development of Slovak film. That is why it adopted (in June 2012) the policy of transmitting announcements regarding new Slovak films. This policy enables broadcasters (public and commercial) to air short spots, e.g., on the premiere of a new Slovak film, which may inform the public about the plot, characters, the date of the premiere etc. Such a spot must however be part of a larger campaign aimed at promoting a Slovak film or carry a special message that indicates the intention to promote Slovak film as a whole. Such spots will qualify as public service announcements, thus falling outside the definition of advertising.

The PSB seems to accept the Council's arguments since it paid the fine and did not appeal against the decision.

Rozhodnutie c.: RP/083/2012, 04.12.2012

http://www.rvr.sk/_cms/data/modules/download/1359974114_RP_083_2012_RTVS.pdf

Council's decision of 4 December 2012

Najvyšší súd, 4Sž/10/2012, 18.09.2012

http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=D1BDCC95-813B-4AE1-BC16-55E9ACB9D6DA&PojCislo=2824

Supreme Court's decision, 4Sž/10/2012, 18 September 2012

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