[SK] Broadcasting of a Film Trailer is Advertising

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The Supreme Court on 13 November 2012 confirmed a decision of the Council for Broadcasting and Retransmission of the Slovak republic ("Council") in which the Council had imposed a fine of EUR 3,319 on the major commercial TV station broadcasting the channel "TV JOJ" for broadcasting more than 12 minutes of advertising in one hour.

The Council's monitoring revealed that during one of the examined hours the broadcaster transmitted advertising spots that altogether lasted 11 minutes and 59 seconds. However, during the same hour, another message (of 19 sec.) about a film that was coming to cinemas that week was broadcast. This spot was aired amongst announcements made in connection with the broadcaster's own programmes. The announcement contained short extracts from the film with brief text information on its plot. The words "In the cinemas from ...." with the name of the distribution company was displayed at the end of the message.

During the legal investigation, the broadcaster claimed that the particular spot was a usual trailer for his own programme and should therefore not be counted as advertising time. In order to sustain this statement, the broadcaster presented the license agreement that entitled him to transmit the film on his TV channels. He also claimed that viewers must have understood that the film is his own programme because of the time slot of the spot (amongst other trailers not among advertising spots).

In its decision, the Council stressed that any announcement must be assessed on the basis of its content and nature and not by the provisions of a particular contract. The spot itself did not carry any kind of message that would inform viewers about the fact that the broadcaster would air this programme in future. On the other hand, the spot contained very clear information about the date of the cinema premiere.

The Council also reviewed the contract and pointed out that according to its provisions the broadcaster was not allowed to broadcast this film on its TV channels for at least one year and three months from the broadcast of the so-called trailer. On the contrary, it was obliged under the contract to promote this film on its TV channels one week before its cinema premiere. Based on these facts, the Council stated that despite the fact that the broadcaster owns the

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broadcasting rights for this film, the purpose of this message was clearly to promote the premiere of this film in cinemas. Thus, the spot qualifies as an advertising spot and must be counted within the total time devoted to advertising.

The broadcaster claimed in its appeal that no regulation sets any “time restrictions” regarding announcements made in connection with own programmes. The Court however dismissed the broadcaster’s appeal and agreed with the Council that a regular viewer could not have known that the featured film would be aired on the broadcaster’s TV channels.

The Court however did not answer the question touched upon in the Council’s decision, if a “trailer” may serve its purpose if it is connected with a film that will be aired at soonest in more than a year’s time. This question will yet have to be resolved soon since the Council is already investigating a similar case where the same broadcaster aired a spot about another film (that was just coming to the cinemas), but this time it carried along with the date of the premiere the text “TV JOJ will broadcast this film in the future”.

Najvyšší súd, 3Sž/10/2012, 13.11.2012

http://www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=69E29B2F-C586-4666-9C2A-F1303906BF63&PojCislo=3383

Supreme Court decision of 13 November 2012, 3Sž/10/2012

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