[DE] BGH Bans Advertising Aimed at Children in Online Role-Playing Game

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According to media reports, the Bundesgerichtshof (Federal Supreme Court - BGH), in a ruling of 17 July 2013 (case no. I ZR 34/12), upheld an action brought by the Bundesverband der Verbraucherzentrale (Federation of German Consumer Organisations - vzbv) and prohibited the software firm Gameforge from advertising game accessories sold in connection with its online role-playing game “Runes of Magic”. The vzbv had already cautioned Gameforge in 2010 and had brought actions in the lower courts. However, these had been dismissed by both the Landgericht Berlin (Berlin District Court) and the Kammergericht Berlin (Berlin Supreme Court - KG), which had rejected the appeal against the first-instance ruling on 31 January 2013 (case no. 24 U 139/10).

“Runes of Magic” is an online fantasy role-playing game based on the free-to-play model. Although the software required to play the game is available free of charge, additional equipment for the game’s characters must be paid for. Gameforge advertised this under the slogan “Grab the opportunity and give your arms and weapons a certain something”. The slogan appeared during the game with the use of a link that took the player directly to a website where game accessories could be purchased.

The BGH decided that this slogan represented an unfair commercial activity, since it appealed directly to children to buy these accessories. It was irrelevant whether the advertising appeared “in-game”, or elsewhere on the Internet. An invitation to obtain further information about products was acceptable. However, a direct exhortation to purchase was a different matter altogether. Unlike the KG Berlin, the BGH considered the slogan a direct exhortation to children to purchase, which infringed Article 3(3) of the Gesetz gegen den unlauteren Wettbewerb (Act Against Unfair Competition - UWG). This was demonstrated by the direct link from the slogan to the sales platform on which the accessories could be purchased, as well as the possibility of paying not only by credit card but also by Short Message Service (SMS), with the cost charged to the customer’s mobile phone bill. The slangy wording of the slogan was also designed to appeal to young people. The protection of children and young people required a certain level of restraint, even on the Internet, according to the BGH.

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Urteil des Bundesgerichtshofs vom 17. Juli 2013 (Az. I ZR 34/12)

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