[AT] Federal Communications Board on Labelling of Split-Screen Advertising

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

In a decision of 23 July 2013, the Austrian Bundeskommunikationssenat (Federal Communications Board - BKS) clarified the requirements for the proper labelling of split-screen advertising on television.

In the case at hand, the television broadcaster PULS 4 had broadcast two split-screen advertising spots that were spatially separated from the programme material (in this case: written programme announcements), with the word “Werbung” (advertising) appearing directly next to the broadcaster’s logo in the top left-hand corner of the screen.

The regulatory body, KommAustria, had considered this to be a breach of the labelling requirements as laid down in Article 43(1) of the Audiovisuelle Mediendienste-Gesetz (Audiovisual Media Services Act - AMD-G). It was true that, according to Article 43(2) AMD-G, the required separation of advertising from editorial content could, in principle, be achieved by means of the division of the screen, without any additional separation by optical or acoustic means. In this particular case, however, the word “Werbung” had appeared in the editorial part of the screen. This was misleading because the part of the screen that was not devoted to advertising had been labelled as “Werbung”. Since the average viewer would therefore not have been able to easily identify which content the word “Werbung” was referring to, the spatial division of the screen had not separated editorial and advertising content sufficiently clearly.

In the appeal proceedings, the BKS came to the opposite conclusion. It considered that the advertising was clearly recognisable in the sense of Article 43(1) AMD-G. Proper account had also been taken of the requirement for clear spatial separation of content in accordance with Article 43(2) AMD-G.

Taking into account the average viewer and the key benchmarks, according to which, on the one hand, there should be no risk of the viewer confusing advertising with editorial content and, on the other, the viewer should be able to easily recognise the advertising as such, it was obvious which part of the split screen had contained advertising in this case.

In view of the overall layout of the screen and the fact that the advertising had taken the typical form of advertising spots, it had to be assumed that, in both

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cases, it would have been clear to the viewer which part of the screen had been devoted to advertising. There had therefore been no risk of confusion between the advertising and editorial content. In this respect, the BKS also did not think that any harm had been caused by the appearance of the word “Werbung” in the part of the screen that had not actually been used to show the advertising.

Entscheidung des BKS vom 23. Juli 2013 (GZ 611.001/0001-BKS/2013)

http://www.bundeskanzleramt.at/DocView.axd?CobId=52263

BKS decision of 23 July 2013 (GZ 611.001/0001-BKS/2013)

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