[DE] BGH confirms advertising ban for online game “Runes of Magic”

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According to media reports, the Bundesgerichtshof (Federal Supreme Court - BGH), in a ruling of 18 September 2014, which has not yet been published in full (case no. I ZR 34/12), decided that an advertisement for video game accessories, written in language likely to appeal to children, represented an unlawful exhortation to children to purchase and therefore infringed Article 3(3) of the Act against unfair competition (Gesetz gegen den unlauteren Wettbewerb - UWG). This ruling is also relevant to the audiovisual media sector, firstly because video games and their advertisement represent audiovisual content and, secondly, because the advertising rules in the UWG are very similar to those in the Audiovisual Media Services Directive (AVMSD).

Through its ruling, the BGH confirmed a judgment by default that it had previously issued against the game operator on 17 July 2013 (see IRIS 2013-8/14).

The Bundesverband der Verbraucherzentrale (Federation of German Consumer Organisations - vzbv) had complained after advertisements for additional content for the “Runes of Magic” game had appeared in online forums, using the slogans “Pimp your character” and “Grab the opportunity and give your arms and weapons a certain something”. After the defendant appealed against the judgment by default, a further oral hearing was held on 18 June 2014 and the BGH issued its decision on 18 September 2014.

The BGH decided that the use of the informal “Du” and of “children’s language including popular anglicisms” comprised a suggestive and unlawful exhortation to children to purchase. The BGH’s decision is based on Article 3(3) of the UWG in conjunction with no. 28 of the annex to the UWG (the so-called “black list” of unlawful commercial practices), which states that an advertisement that exhorts children to buy advertised products themselves or to ask their parents to do so infringes competition law. In the BGH’s opinion, the actual age structure of players of the game was “not crucial”. The BGH therefore did not rule on what exactly constitutes “children” for the purposes of no. 28 of the annex to the UWG.

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

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=2f44c34319

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Ruling of the 1st civil chamber of 17 July 2013 (I ZR 34/12)

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