[DE] LMK appeals to Constitutional Court against BVerwG decision on “Hasseröder Männercamp”

IRIS 2015-1:1/13

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

On 16 October 2014, the Landeszentrale für Medien und Kommunikation Rheinland-Pfalz (Rhineland-Palatinate Media and Communication Office - LMK) announced that it had lodged an appeal with the Bundesverfassungsgericht (Federal Constitutional Court - aBVerfG) against the judgment of the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG) of 23 July 2014 (case no. 6 C 31.13).

The BVerwG had ruled (see IRIS 2014-9/14) that the depiction of a brand of beer at the “Hasseröder Männercamp” before and after the live broadcast of a football match on the Sat.1 television channel did not constitute unlawful product placement for the purposes of Article 7(7)(3) of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV) because it had not been excessive. The LMK disagreed, considering that the way in which the product had been depicted by Sat.1 breached the relevant provisions on product placement.

The LMK said that, by appealing to the Federal Constitutional Court, it hoped to obtain a preliminary ruling from the Court of Justice of the European Union (CJEU) in order to clarify the interpretation of the notion of “excessive depiction”. The LMK complained to the BVerfG about the BVerwG’s failure to submit a question to the CJEU, referring to the principle of the prohibition of the removal of a case from the jurisdiction of the lawful judge, as enshrined in Article 101 of the Grundgesetz (Basic Law - GG). In the LMK’s opinion, the BVerwG’s interpretation of the notion of “excessive depiction” differs significantly from that contained in the case law of other EU member states. According to the LMK, such a different interpretation should not be used by a supreme federal court such as the BVerwG without referring the matter to the CJEU for a preliminary ruling first. The LMK also stressed that the case at hand was of fundamental importance because there is currently no relevant case law on product placement in Germany.

The LMK concluded by stating that the referral of the matter to the Constitutional Court has received widespread support from the other Land media authorities in Germany.

Pressemitteilung der LMK vom 16. Oktober 2014

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online.de/fileadmin/webdateien/PDF/Presse/2014/pres1610_verfassungsbeschwerde.pdf

LMK press release of 16 October 2014

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