[DE] OLG Frankfurt am Main decides that “Immer Netz … hat der Netzer” slogan is not misleading

IRIS 2015-2:1/10

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In a ruling of 25 September 2014 (case no. 6 U 111/14), the Oberlandesgericht Frankfurt am Main (Frankfurt am Main Court of Appeal - OLG) decided that the advertising slogan for a mobile phone tariff, “Immer Netz ... hat der Netzer” (the network never fails the networker), was not a misleading statement for the purposes of Article 5(1)(1) of the Gesetz gegen unlauteren Wettbewerb (Act against Unfair Competition - UWG) concerning the essential characteristics of a service.

The defendant, a telecommunications company, had advertised its service as follows: “Immer Fisch hat … der Fischer. Immer Glas hat … der Glaser. Immer Musik hat … der Musiker … und immer Netz hat … der Netzer” (“the fisherman … always has fish. The glazier … always has glass. The musician … always has music … and networker … always has a network”) The plaintiff, a competitor of the defendant, considered this to be misleading advertising and argued that it would give the target audience the impression that they would be able to use the advertiser’s mobile phone service absolutely anywhere. Even customers who knew that all networks had dead spots would assume from the advertisement that the advertiser had now managed to provide voice services with 100% coverage.

Agreeing with the lower-instance Landgericht Frankfurt/M. (Frankfurt/M. District Court - LG) (judgment of 16 April 2014 - case no. 8 O 125/13), the OLG Frankfurt am Main ruled that the advertising slogan was not misleading.

Firstly, the OLG held that customers would recognise that the association between the surname “Netzer” (networker) and the concept of “Netz” (network), as in a mobile phone network, was a humorous play on words. This was true, regardless of whether the slogan was used in isolation (as on the defendant’s website) or in combination with other, similar puns (as in the TV ad).

The OLG nevertheless recognised that the phrase “immer Netz” was clearly a reference to the quality of the mobile connection. However, any rational customer would not take this statement literally and would not assume that he would have 100% network coverage at all times. Rather, the phrase referred to a relatively high level of network coverage. The Court reasoned that every customer knew from experience that dead spots could occur in certain situations (on trains, in

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tunnels, valleys, cellars, etc.).

Furthermore, the OLG assumed that if a provider managed to eliminate the numerous troublesome dead spots in its mobile network, it would represent a technical breakthrough that would give the provider concerned a clear competitive advantage to which it would draw attention in its advertising.

The OLG ruled that there was no reason to grant an injunction under Article 8(1) in conjunction with Article 8(3) and 8(4)(10) UWG. The defendant was not trying to win customers through unfair means, since the disputed advertisement was not being misunderstood.

The ruling of the OLG Frankfurt am Main is final.

Urteil des OLG Frankfurt am Main vom 25. September 2014 - Az.: 6 U 111/14

http://www.webhosting-und-recht.de/urteile/Werbeaussage-Immer-Netz-hat-der-Netzer-ist-keine-irrefuehrende-Werbung-fuer-Telekommunikations-Unternehmen-Oberlandesgericht-Frankfurt_aM-20140925/

Ruling of the OLG Frankfurt am Main of 25 September 2014 - Az.: 6 U 111/14

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