# [DE] Repeated appearance of logo constitutes surreptitious advertising

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In a recently published decision of 9 March 2015 (case no. 7 B 14/1605), the Bayerische Verwaltungsgerichtshof (Bavarian Administrative Court - BayVGH) ruled that the repeated appearance of a logo during a television programme constituted illegal surreptitious advertising.

The case concerned the broadcast of the programme 'Learn from the Pros' by TV channel Sport1, in which professional poker players give tips and tricks for the card game. As well as a standard sponsor reference at the start of the programme, the logo of the provider Fulltiltpoker.net was visible in virtually every shot, including on a large screen between two people talking to each other, on animated and real playing chips, in lower thirds, in explanatory animations, on the back of playing cards and on boards used to decorate the studio. At the end of the programme, viewers were encouraged to visit the Fulltiltpoker.net website.

The TV broadcaster's appeal against a decision of the Bayerische Landeszentrale für neue Medien (Bavarian New Media Office) had been rejected by the Bayerische Verwaltungsgericht München (Bavarian Administrative Court Munich) on 13 June 2013.

The BayVGH upheld the lower court ruling and found that the aforementioned use of the Fulltiltpoker.net logo constituted surreptitious advertising in the sense of the legal definition contained in Article 2(2)(8)(1) of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV), since the broadcaster had deliberately advertised the services of Fulltiltpoker. The whole programme had more or less borne the stamp of Fulltiltpoker. The provider's logo had appeared in the frame whenever moves had been explained by two commentators, i.e. precisely when viewers were paying particularly close attention. Furthermore, the Fulltiltpoker brand had been presented on an exclusive basis during the programme. The broadcaster had therefore breached the ban enshrined in Article 7(7) RStV.

Finally, the court did not consider the numerous appearances of the logo as so-called forced advertising. Since the programme had not been transmitted as part of the broadcaster's obligation to provide information, other broadcasters would not have needed to show the logo in order to report on a real-life event.

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Incidentally, misleading surreptitious advertising also occurred when goods or services were depicted in the editorial programme without being labelled as advertising and with such intensity and frequency that the intention to advertise was no longer hidden. In the BayVGH's opinion, the lack of an advertising label alone was sufficient to prove the intention to mislead viewers. It would be a strange outcome if the breach of the principle of separation of advertising and editorial content were to go unpunished simply because of its blatant nature.

***Urteil des BayVGH vom 9 März 2015 (Az. 7 B 14/1605)***

https://openjur.de/u/768898.html

*BayVGH ruling of 9 March 2015 (case no. 7 B 14/1605)*

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