[DE] Advertising in online games does not constitute prohibited children's advertising

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According to media reports, in a judgment of 1 December 2015 (Case U 74/15) the Kammergericht Berlin (Berlin Higher Regional Court) ruled in appellate proceedings that advertising for virtual products in an online role-playing game should not necessarily be regarded as a direct invitation to children to buy the items. There was, the Court said, no breach of competition law as the advertising messages in the game were not aimed specifically at minors but at all players.

The Court had to rule on a complaint from the Verbraucherzentrale Bundesverband (Federation of German Consumer Organisations) concerning in particular two statements in an online role-playing game: “Buy in the pet shop” and “New and exclusive mount: Armoured Bloodwing - buy it now”. The trial court, the Landgericht Berlin (Berlin Regional Court) had already ruled against the consumer organisations in its judgment of 21 April 2015 (Case 16 O 648/13), in which it held that the informal targeting in online games did not constitute a prohibited invitation to children to buy products.

The Berlin Higher Regional Court shared this view, stating that not all computer games could be categorised as children’s games, and that the categorisation of the game as a “fantasy game” changed nothing in that respect. Even though the setting of the game was a colourful fantasy world and the figures were typical fantasy beings, it was not necessarily a children’s game. Neither did a 12-plus age rating, prepaid cards, or the mentioning of underage users in the Standard Terms and Conditions constitute decisive indicators that minors were the target group. Rather, which group of players were targeted by a game had to be determined individually. Like the Court below it, the Higher Regional Court judges were of the opinion that addressing players in the second person singular familiar form (“Du”) was no longer unusual in advertisements targeting adults, and could not be used as an indicator that the target audience was children. Rather, the wording in issue appealed to the role player’s sense of pleasure in playing the game, irrespective of his or her age. The Court also stated that no objections could be raised to the use of “code” typical of young people to exclude “stuffy grown-ups”. Finally, the Court stated that the advertising in the game did not exploit children’s lack of experience, and that the prices for the items advertised had been communicated in a transparent way.

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The Bundesgerichtshof (Federal Court of Justice) had already had to address issues relating to children's advertising in its "Runes of Magic" decision (judgment of 17 July 2013, Case I ZR 34/12; see IRIS 2013-8/14 and IRIS 2014-10/8), but the federal judges came to different conclusions from those of the Berlin Higher Regional Court: the Federal Court established that advertising characterised by addressing individuals directly in the informal second person singular and by the use of terms typical of those used by children, including popular Anglicisms, was primarily aimed at children. The Higher Regional Court has now disagreed with this view. The judgment is final.

Bericht über das Urteil des Kammergericht Berlin vom 1. Dezember 2015 (Az. U 74/15)

http://spielerecht.de/kg-berlin-nicht-alle-computerspiele-sind-kinderspiele-keine-verbotene-kinderwerbung-fuer-onlinespiel/

Report on the judgment of the Berlin Higher Regional Court of 1 December 2015 (Case U 74/15)

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