[DE] Prohibited product placement of biscuits in TV show (“jungle camp”)

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The 7th Chamber of the Verwaltungsgericht Hannover (Hanover Administrative Court) in a judgment of 18 February 2016 (Case 7 A 13293/15) has held that if a chocolate biscuit is too highly praised in a TV show, this constitutes prohibited product placement.

In a controversial scene lasting about ninety seconds in the RTL show “Ich bin ein Star - Holt mich hier raus” (Dschungelcamp) (I'm A Celebrity - Get Me Out Of Here [Jungle Camp]), the show’s participants were given a metal box with a big packet of “Pick Up” chocolate biscuits manufactured by food manufacturer, Bahlsen. The participants opened the box, held the biscuits up in the air, and cheered. The programme then showed a close-up of the participants enjoying them. This was followed by the candidates praising the product at length in individual interviews (“jungle telephone”). The Niedersächsische Landesmedienanstalt (Lower Saxony Media Authority) subsequently objected to the product placement as constituting prohibited surreptitious advertising. The media watchdogs cited the provisions of the Rundfunkstaatsvertrag (Interstate Broadcasting Agreement - RStV) as the reason for holding that view, according to which a product placement can under certain conditions be permissible in “light entertainment programmes” pursuant to section 44(1) RStV. However, a prerequisite for this is, according to section 7(7)(3) RStV, that the product is not given undue prominence. The TV station did not agree with the media authority’s assessment and took the case to the Hanover Administrative Court.

In the Court’s view too, however, the advertising purpose in the scenes concerned was too obvious. The chocolate biscuits were the central focus, as it were, and the description of the product had constituted “exaggerated verbal glorification”. The RStV even suggested that a product could be permitted to be highlighted in a TV show but stated that it could not be given undue prominence because there had to be a clear distinction between a programme and advertising. According to the Court, undue prominence was given when the advertising purpose was dominant and the natural flow of the programme faded into the background. With regard to the Jungle Camp episode in issue, the initial scenes had not departed from the context of the action: the use of the biscuits as a reward for the hungry candidates, the jubilation when they opened the box, and the close-ups of the campers eating the biscuits did not yet breach the prohibition on undue prominence, according to the judges. However, the candidates’ excessive praise

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of the product both in the jungle phone box and off-screen had exceded the restrictions on product placement, and had therefore become surreptitious advertising. Moreover, the main action as such had already finished by then. The candidates had referred exclusively to the product in their comments, so that, according to the Court, the advertising purpose was dominant. The description of the product therefore had to be categorised as prohibited surreptitious advertising. RTL has the right to seek leave to appeal to the Niedersächsisches Oberverwaltungsgericht (Lower Saxony Supreme Administrative Court) in Lüneburg.

Die Pressemitteilung zum Urteil des VG Hannover vom 18. Februar 2016 (Az.: 7 A 13293/15)

http://www.verwaltungsgericht-hannover.niedersachsen.de/portal/live.php?navigation_id=19421&article_id=141068&_psmand=126

Press release on the judgment of the Hanover Administrative Court of 18 February 2016 (Case 7 A 13293/15)

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