[DE] Accreditation rules of the Bavarian Football Association lawful

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The Bayerischer Fußballverband (Bavarian Football Association) may continue to charge licence fees and demand that footage of amateur matches be provided free of charge. This was ruled by the Landgericht München (Munich District Court) in a decision of 11 June 2016 (Case 17 HK O 7308/15).

Several newspaper publishers had obtained an injunction against the Bavarian Football Association. These publishers also use film footage to report on various amateur matches and objected to the Association's accreditation rules, which state that camera crews may only access matches if they pay a licence fee or provide their footage free on the Association's own, commercially operated platform, bfv. The fees range from between EUR 250 for Landesliga (State League) matches and EUR 1000 for Regionalliga (Regional League) matches. After camera crews had been denied access to various games with reference to the accreditation rules, the publishers applied to a court for an injunction. This was refused, as was their appeal against that decision.

The publishers accused the Association of breaching Section 19(2)(1) of the Gesetz gegen Wettbewerbsbeschränkungen (Restraints on Competition Act - GWB) claiming that it exploited its monopoly position using its accreditation rules. Furthermore, the publishers were deliberately impeded in their work pursuant to Section 4(10) of the Gesetz gegen den unlauteren Wettbewerb (Unfair Competition Act - UWG) as the association was allegedly only interested in promoting its own video portal, which was in direct competition with the publishers' own offerings, and therefore abused its position as a non-profit association. The Association pointed out that associations were entitled to deny access to their premises, and emphasised that it acted solely in the interests of its member associations by creating fair rules for all clubs with regard to video reporting on specific games. The Court found that the clubs had a right to exploit not only the games of the top three national professional football leagues, but also the amateur leagues.

The Munich District Court dismissed the publishers' objection, stating that there had been no "deliberate" impediment to competition within the meaning of section 4(10) of the Unfair Competition Act. As any activity by a company to promote its own sales always had an adverse impact on the opportunities for

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fellow competitors to develop their competitive capabilities, other grounds were necessary to fulfil the definition of unfair competition. However, none were discernible in the instant case. The Association's intention was to promote its own video offerings, and therefore, in particular, not only to affect its rivals' competitive development. Furthermore, after weighing up all the interests of both parties, the Court concluded that the Association's action was not unreasonable. In particular, the Bundesgerichthof (Federal Court of Justice - BGH) had acknowledged that a football association could ensure the exclusive economic exploitation of video reporting by either referring to the owner's right to deny or authorise access in order to prevent footage being produced by third parties, or by only permitting that by charging them a fee. In that connection, the right to deny or authorise access served to ensure the exploitation of the services rendered by the sports event's organisers. In addition, the publishers were not completely prohibited from reporting on the matches, but had only been required to meet certain conditions. Section 19(2)(1) GWB could not have been breached as the restrictions on access that emerged from the accreditation rules had the same impact on all companies and the commercial exploitation of their matches was a legitimate interest of all association members.

The publishers have already announced their intention to appeal against the decision.

Entscheidung des LG München I vom 11. Juni 2016 (Az. 17 HK O 7308/15)

http://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2015-N-16512?hl=true&AspxAutoDetectCookieSupport=1

Decision of the Munich District Court of 11 June 2016 (Case 17 HK O 7308/15)

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