[DE] Unmarked TV programme spots in advertising block are unlawful

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In two decisions of 17 November 2016, the seventh chamber of the Verwaltungsgericht Hannover (Hanover Administrative Court - VG) rejected two appeals by RTL against decisions issued by the Niedersächsische Landesmedienanstalt (Lower Saxony media authority) following breaches of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV).

The advertising-related provisions of the Rundfunkstaatsvertrag set out, in a general way, the obligation to separate editorial content from advertising, lay down limits for broadcast advertising, and provide a basis for the prosecution of those who infringe them. Exactly how a TV channel should separate advertising from programme material, what a sponsor reference should look like, and the point at which an infringement occurs, have been summarised by the regional media authorities in the Gemeinsame Richtlinien der Landesmedienanstalten für die Werbung, zur Durchführung der Trennung von Werbung und Programm und für das Sponsoring - sowohl im Fernsehen als auch im Hörfunk (Joint Guidelines of the regional media authorities on advertising, the separation of advertising and programme material, and sponsorship on television and radio).

In the first case (case no. 7 A 430/16), during a labelled advertising break, RTL had broadcast a spot advertising the “Toggo” (www.toggo.de) children’s programme window shown on the Super RTL channel, which is part of the RTL group. First broadcast in 2001, “Toggo” is aimed at 6- to 13-year olds. The administrative court agreed with the media watchdogs and considered the advertisement, a form of cross-promotion, as a breach of the Rundfunkstaatsvertrag. Under Article 7(3) RStV, advertising must be readily recognisable as such, and clearly distinguishable from editorial content. However, under the case law of the Bundesverwaltungsgericht (Federal Administrative Court), spots advertising programmes are considered neither editorial content nor advertising. Article 45(2) RStV states that they do not count towards the admissible duration of television advertising. Viewers should therefore always be able to recognise when advertising resumes after such a spot. If commercial advertising follows without the insertion of a corresponding logo, there is no separation between advertising and editorial content. The administrative court therefore rejected the private broadcaster’s appeal against the media authority’s decision.

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In the second case (case no. 7 A 280/15), also during a labelled advertising break, RTL had broadcast a spot advertising the programme “Yps” on the RTL NITRO channel, which is also part of the RTL group. “Yps” is a science magazine show for children, based on the printed magazine of the same name.This spot was linked to a commercial spot for a programme guide in the form of a so-called ‘combi-spot’. The court also considered this a breach of the requirement to separate advertising and editorial content. It argued that a ‘combi-spot’ infringed the Rundfunkstaatsvertrag by its very nature. If a ‘combi-spot’ was separated into a programme ad and commercial advertising, an advertising logo should be shown at the relevant time. Since it considered this case to be fundamentally important, the court decided that its ruling could be appealed before the Niedersächsische Oberverwaltungsgericht (Lower Saxony Administrative Appeal Court).

Pressemitteilung des VG Hannover vom 18. November 2016

http://www.verwaltungsgericht-hannover.niedersachsen.de/aktuelles/pressemitteilungen/tv-programmhinweise-im-werbeblock-ohne-zaesur-unzulaessig-148777.html

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