[CZ] The Supreme Administrative Court upheld the fine

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On 17 September 2013, the Broadcasting Council of the Czech Republic issued decision no. 4143/2013 (pursuant to Section 8a (2) (g) and 8a (6) b) of Act no. 40/1995 Coll., on advertising regulation), establishing setting a fine of CZK 250000 (EUR 10000) for a breach of one of the rules laid down in section 5d (2) b) of the said law.

The defendant, Biopol, broadcast a commercial during the teleshopping programme "Sunday Recipient Extra" on 11 November 2012 on the Prima television channel advertising the possible preventive and curative effect of a diet supplement (manufactured by Biopol), Barny's Kolostrum.

The Council stated in the reasoning for its decision that Biopol misled consumers by claiming that its diet supplement possibly had both a preventive and curative effect. In particular, the Council pointed to the fact that the commercial represents Barny's Kolostrum as affording protection against viruses and bacteria; it also represents it as facilitating easier treatment of (and quicker recovery from) related diseases, thus claiming that it has curative properties. Viewers were informed that manifestations such as a cough and rhinitis are symptoms that can be pre-empted by using Barny's Kolostrum. The Council also pointed out that the commercial’s message indicated the possibility of using the product for the treatment of certain symptoms (such as a cough or a runny nose) and that the use of the product made it easier to tackle those diseases. The term "easier to deal with disease" has been interpreted by the Council as amounting to a claim that the product facilitates the healing process - and hence a cure

Appeals against the Council's decision were unsuccessfully lodged with the Municipal Court in Prague and the Supreme Administrative Court. Both courts upheld the fine.

Rozsudek nejvyššího správního soudu č.j. 5 As 317/2017 ze dne 12.9.2018

https://www.rrtv.cz/cz/files/judikaty/ce499239-292c-41b7-b92a-48cd1343f0be.pdf

Decision of the Supreme Administrative Court Nr. 5 As 317/2017 from 12 September 2018

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