[DE] Programme banned on account of surreptitious advertising

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On 21 January 2019, the Bayerische Landeszentrale für neue Medien (Bavarian New Media Authority - BLM), one of 14 German regional media authorities that monitor radio, television and telemedia services, announced that it had prohibited Amazon Instant Video Germany GmbH from broadcasting an episode from a German series with immediate effect because it infringed the ban on surreptitious advertising.

The case concerns the German-produced sitcom “Pastewka”, which depicts the day-to-day struggles of the protagonist, Bastian Pastewka. The first seven series were broadcast by German TV channel Sat.1 until 2014. The eighth series has been available on-demand from Amazon Prime since 2018. Part of the fourth episode of the eighth series, entitled “Das Lied von Hals und Nase”, was filmed in front of and inside a branch of the German electronics store “Media Markt”, whose logo is frequently shown and whose name is mentioned during the episode. The BLM considered these frequent, blatant references to the Media Markt brand as unjustifiable from a dramatic point of view and therefore classified them as surreptitious advertising. Under Article 7(7), sentence 1, in connection with Article 58(3) of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV), this form of advertising in on-demand audiovisual media services such as Amazon Prime is unlawful. The BLM therefore not only formally objected to the episode being made available, but banned it in order to prevent further breaches of broadcasting law. It based its jurisdiction on the fact that the company Amazon Instant Video Germany, which had editorial responsibility for German Prime Video content, had its headquarters in Munich, so it was irrelevant that Amazon was an American company and that the German-language website Amazon.de was operated by Luxembourg-based Amazon EU S.à.r.l.

According to media reports, Amazon has already announced its intention to take legal action against the decision. The disputed episode remains available on Prime Video. However, Amazon said it would replace the episode with an edited version in which the disputed references would no longer be visible.

Pressemitteilung der BLM vom 21. Januar 2019

https://www.blm.de/infothek/aktuell/aktuell-2019-01-21-schleichwerbung-bei-pastewka-blm-untersagt-folge-das-lied-von-hals-und-nase-auf-amazon-prime-video-

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