[NL] Two Dutch public service broadcasters fined by the Dutch Media Authority for prohibited communications

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In two decisions of 26 February 2019 and 12 March 2019, the Dutch Media Authority (Commissariaat voor de Media - CvdM) fined two Dutch public service broadcasters for infringing the Dutch Media Act (Mediawet 2008). According to the CvdM, the public broadcasters are both liable for prohibited forms of expression in one of their television shows.

Under the Dutch Media Act, media offered by public service broadcasters are not allowed to contain avoidable expressions (vermijdbare uitingen) that clearly have the effect of promoting the purchase of certain products or services (article 2.89). This provision is specified in a general administrative decree (Mediabesluit 2008). The decree stipulates that avoidable expressions are allowed in television shows with an informative or educational nature if the expression in question (1) fits within the context of the offered media, (2) does not affect the formula or integrity of the media (3) is not broadcast in an exaggerated or excessive manner, and (4) does not involve the specific promotion of the product or services mentioned.

The first fine was imposed by the CvdM on a public service broadcaster with regard to an informative television show in which a variety of questions from the audience about wines are answered. In one of the shows, the host is wearing a T-shirt from his own merchandise line. At the same time that the programme in question was re-broadcast, the t-shirt was also available for sale in the online store of the host. According to the CvdM, the explicit and excessive display of the T-shirt in the show while it was on sale constituted a form of expression that is prohibited under the Dutch Media Act. The CvdM did take into account the fact that the trademark on the T-shirt had been covered and that the public broadcaster did order the removal of the T-shirt from the online store immediately after finding out that it was being offered for sale. In the light of these circumstances, the fine was lowered to EUR 10 000.

The CvdM imposed a second fine on a different public service broadcaster for showing in a talk show a movie clip that had been taken from the social media webpage of one of the talk show’s guests. In the clip, the guest was using and promoting fitness equipment. In response to a question asked by the talk show host, the equipment and its brand were discussed during the show. The CvdM states that the showing of the movie clip during the talk show also constituted a

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form of prohibited communication. The public service broadcaster argued in its own defence that the clip had been merely illustrative. Moreover, the comments made in respect of the product had been unavoidable due to the fact that the show had been broadcast live. The CvdM rejected these arguments, stating that the movie clip had been selected in advance and that a different picture or clip could have been used for illustrative purposes. The broadcaster also argued that reasonable measures had been taken by the host, who had intervened and switched topics once it had become clear that the fitness equipment in question was a commercial product. The CvdM ruled that the fact that the talk show host had intervened was irrelevant in this case since the topic had not been introduced by the talk show guest. Since the public service broadcaster had already received a warning for an earlier infringement of the same provision in November 2017, the imposed fine was set at EUR 20 000.

Commissariaat voor de Media, "Sanctiebeschikking 712584/716346 AVROTROS in verband met het programma Gorts Wijnkwartier", 26 februari 2019

https://www.cvdm.nl/wp-content/uploads/2019/03/2019-sanctiebeschikking-AVRO-TROS_Gorts-Wijnkwartier_CLEANED.pdf

Dutch Media Authority, "Sanction decision against AVROTROS with regard to the television show Gorts Wijnkwartier", 26 February 2019

Commissariaat voor de Media, 'Sanctiebeschikking 712585/716769 KRO-NCRV in verband met het programma Jinek', 12 maart 2019

https://www.cvdm.nl/wp-content/uploads/2019/03/Sanctiebeschikking-KRO-NCRV-voor-Jinek.pdf

Dutch Media Authority, "Sanction decision KRO-NCRV with regard to the television show Jinek", 12 March 2019

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