[DE] Advertising and News Magazine's - How Far Can They Go?

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In two appeal judgements given at the end of April, the Federal Court in Karlsruhe ruled that publication of lists of "top professionals" by news magazines constituted unfair competition, thus upholding the judgements previously given by the Munich Court of Appeal.

The magazine, "Focus", had run a series of articles on doctors and lawyers in Germany and had used criteria such as "reputation among colleagues" and "membership of expert bodies" to produce lists of the "500 best doctors" and "500 best lawyers".

The court saw this as harmful to other members of these professions, since claims that the selection procedure was objective were misleading and the criteria applied could in no way be verified.

In considering whether the freedom of the press guaranteed by Article 5, par. 1, sentence 2 of the Basic Law was at issue, the court found that reportage must contain no more advertising than was strictly necessary for information purposes. In this case, however, there had been excessive advertising, which had benefited the professionals named and harmed those who had not been named, but might well be better qualified. In its decision, the court accepted the arguments put forward by the plaintiffs - in both cases, professional associations which had argued that the selection criteria used were meaningless, and that conducting the survey in the major cities only made it unrepresentative of the profession as a whole.

In a judgment given on 11 July 1997, which is not yet final, the Hamburg Regional Court ruled that "Focus" and its managing director were jointly and severally liable and must compensate a Hamburg private bank's shareholders for damage caused when an article on the bank's alleged payment problems was advertised. The magazine had mainly relied on TV spots to attract readers. These focused on the bank's "problems" and on the danger that many people might "lose their money". They ended with a shot of the title page, carrying the headline: "Exclusive, Hamburg private bank in trouble: customers fear for their money". In fact, the article did not deal with the bank's financial situation, but with its founder and then chairman of the board.

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On the two working days which followed the showing of the spot, so many customers withdrew their money from the bank that its liquid assets were exhausted.

The Court ruled that the statements complained of had not been shown to be true by the defendant magazine and must therefore be presumed false.

Bundesgerichtshof Urteile vom 30. April 1997 Aktenzeichen (Az): I ZR 196/94 Ärzte; I ZR 154/95 Rechtsanwälte

Federal Court - judgements of 30 April 1997 - File No: I ZR 196/94 - Doctors; I ZR 154/95 - Lawyers

Landgericht Hamburg, Urteil vom 11. Juli 1997 - Az: 324 O 69/96

Hamburg Regional Court, judgment of 11 July 1997 - Az: 324 0 69/96

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