[DE] Berlin Regional Court bans surreptitious advertising on BuzzFeed

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Under German law, online product recommendations must be clearly labelled as advertising if news portals receive commission from the sale of the related products. The *Landgericht Berlin* (Berlin Regional Court) stated this in its ruling of 11 February 2020 in Case no. 52 O 194/18 after Germany's *Verbraucherzentrale Bundesverband* (Federation of Consumer Organisations – vzbv) launched proceedings against the media company BuzzFeed.

On its news portal's home page, the company had listed several articles, including one entitled "18 geniale Dinge, die du dir 2018 mit deinem Amazon-Gutschein gönnen musst" ("18 amazing things you should treat yourself to with your Amazon voucher in 2018"). The article, in which various products were described, had the same visual format as editorial articles published elsewhere on the portal. However, a small notice above the text indicated that BuzzFeed would receive a "small share of the sales revenue" of the linked products. Each of the products had an Amazon Affiliate link through which BuzzFeed received commission. The vzbv, a qualified entity pursuant to Article 4 of the *Unterlassungsklagengesetz* (Injunctions Act – UKlaG), asked the portal operator to stop this practice before finally complaining to the *Landgericht Berlin*. Under German competition law, consumer organisations that are registered as qualified entities can ask the courts to rule on unlawful competitive practices.

The court decided that the format of the articles constituted an unfair business practice because their commercial purpose had not been identified and they were liable to cause consumers to make transactional decisions that they would not otherwise have made. Although consumers were, in principle, aware that freely accessible websites were funded through advertising, they would not assume that editorial articles themselves were used to generate income via links to partner websites. It needed to be made clearly apparent that the website operator would receive payment if a user bought a recommended product via the link provided. The commercial purpose of the product recommendation should be immediately obvious. An inconspicuous notice was insufficient. The court ordered BuzzFeed to stop referring to products in online articles for advertising purposes without indicating the promotional nature of the reference. The judgment is not yet final.

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Pressemitteilung des vzbv vom 7.4.2020 sowie das dort veröffentlichte Urteil des Landgericht Berlin vom 11.2.2020

https://www.vzbv.de/urteil/gericht-verbietet-schleichwerbung-auf-buzzfeed

vzvb press release of 7 April 2020 and the Berlin Regional Court's ruling of 11 February 2020

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