

## [AT] ORF broke advertising rules

**IRIS 2020-9:1/9**

*Gianna Iacino*  
Legal expert

On 30 June 2020, as part of its supervisory activities, the Austrian regulator for broadcasting and audiovisual media, *Kommunikationsbehörde Austria* (KommAustria), ruled that Austrian public service broadcaster ORF had committed several breaches of the ban on surreptitious advertising and two breaches of the requirement to distinguish between advertising and editorial content, enshrined in the *ORF-Gesetz* (ORF Act - ORF-G).

KommAustria is responsible for checking compliance with the ORF-G's provisions on commercial communication. It therefore regularly evaluates programmes that contain commercial communication and follows up possible infringements. During an assessment of the regional radio station Radio Steiermark, KommAustria found three breaches of the ban on surreptitious advertising contained in Article 13(1)(2) ORF-G in three different programmes, as well as two breaches of the requirement to distinguish between advertising and editorial content, enshrined in Article 14(1)(2) ORF-G.

In the programme *Radio Steiermark Marktbericht*, KommAustria was particularly critical of the following comments made by the presenter concerning products on sale at the Kaiser Josef market, especially at the stall of a farmer who was interviewed during the programme: "The tables at Styrian farmers' markets are now literally buckling", "tomatoes of all colours and sizes", "everything is here", "even freshly harvested pears are on offer", "and this aroma is best enjoyed fresh."

In the programme *Die Lange Tafel*, KommAustria criticised the following comments made by the presenter concerning the event: "With a wonderful view of the Schlossberg", "so it's really important to be there", "but next year, make sure in plenty of time that you perhaps come to the 11th Lange Tafel", "all these lucky people", "are you salivating enough, have we given you enough of a taste for the Lange Tafel?", "in fact, there are no places left this year".

In the programme *Steirische Weinwoche*, KommAustria also criticised several of the presenters' comments about the event: "You've just got to be there", "you can try all the different varieties of Styrian wine", "so there's loads going on, and we haven't even reached the end yet".

KommAustria decided that, in all three cases, evaluative statements had been made about the products and services concerned. Contrary to the ORF's claim, these numerous comments constituted more than just factual information. The ORF's argument that "the casual, flowery language was used as a journalistic device" was rejected because that device had been used to create commercial messages. In editorial programmes, the presenter in particular had a specific responsibility to avoid such commercial messages. The comments had been intended to directly promote sales and had been made for advertising purposes. Since these commercial messages had been embedded in an apparently editorial programme, they were likely to mislead listeners as to their commercial intent and therefore constituted surreptitious advertising under Article 13(1)(2) ORF-G.

Reference had also been made on Radio Steiermark to a live broadcast on Zweites Deutsches Fernsehen (ZDF). This was not a channel organised by ORF, so it had no public service remit in Austria. The reference therefore constituted advertising under Article 14(1)(2) ORF-G and should have been clearly distinguished from other programme elements by acoustic means. Since such a distinction had not been made either before or after the reference, the separation requirement of Article 14(1)(2) ORF-G had not been met. Furthermore, a commercial reference to a sponsor had not been identified as such by acoustic means.

### ***Die Entscheidung der KommAustria vom 30. Juni 2020***

[https://www.rtr.at/de/m/KOA185019065/39619\\_KOA%201.850-19-065.pdf](https://www.rtr.at/de/m/KOA185019065/39619_KOA%201.850-19-065.pdf)

*KommAustria decision of 30 June 2020*

