Around the World

Switzerland

SWITZERLAND: ADVERTISEMENTS BY ATTORNEYS AT SPORTS EVENTS

Discussion of Decision 2C_259/2014 dated November 10, 2014 by the Swiss Federal Supreme Court

Advertisements; Constitutional rights; Equal treatment; Lawyers; Professional conduct; Public interest; Sporting events; Switzerland

Introductory remark

The case presented here is not precisely a sports law case. However, it is all about sports and law and might make the one or the other colleague from other jurisdictions smile.

Facts

An attorney advertised his services at ice hockey games of a team of the Swiss National League A (the top league in Switzerland). Whenever, during the game, a player was sent off the ice to the penalty box, the stadium commentator announced "the penalty is presented by", followed by an advertisement displayed on the big LED screens under the roof of the stadium. Said advertisement showed the logo of the law firm, the name of the attorney, a description of his profession in three languages ("Rechtsanwalt—Avocat—Attorney"), the domain names of his websites and the bilingual slogan "aues was rächt isch … tout ce qui est droit …", a pun which can be equally translated into "by all that is right and fair" as well as into "anything legal". The spot lasted eight seconds and was shown seven to eight times per game on average.

The local attorney surveillance authority issued a formal letter of reprimand for breach of the professional rules against this attorney. The attorney appealed this formal letter of reprimand through all instances including the Federal Supreme Court (FSC).

Held

Even though the FSC admitted that the professional rules for attorneys which are stated in a Federal Act allow advertising by attorneys, it stressed that, by law, any advertising has to (a) remain objective, and (b) take into account the public's information needs.

Advertising by attorneys is qualified objective by the FSC if it is presented in a reserved manner. Any attention-grabbing and sensational ways of advertising, however (be it the content or the form of the advertisement or both attention-grabbing and sensational), is prohibited.

The public's information needs are taken into account, pursuant to the FSC's practice, if advertising only communicates simple facts such as the existence of the law firm, the fields of practice of the attorney, the contact details as well as the indication that the attorney represents parties in litigation. Advertising may create but a legitimate demand and may not cause a demand for the unjustified, abusive and inappropriate making use of the legal system by the public.

In the case at hand, the way the advertising was published (a large number of obvious advertisements during an ice hockey game, presentation of the advertisements by the stadium commentator, creation of a connection of attorney services with penalties) was not qualified by the FSC as sufficiently discreet but rather as clearly sensational and attention-grabbing. The spectators had no possibility to overlook the advertising: on the contrary they were forced to take note of it again and again and again. Moreover, the

advertised attorney services did not have any objective connection with the penalties at the occasion of which they were displayed. All of this—as well as the fact that ice hockey spectators do not attend a game expecting to obtain information on attorney services which renders such information as unsuitable and not meeting the public's needs—led the FSC to the conclusion that the limits set by the aforementioned Federal Act were obviously exceeded by far.

The attorney had criticised the appealed decisions by claiming that his constitutional rights to equal treatment and to economic freedom were breached. However, the FSC did not share this view. It confirmed that the advertising rules for attorneys may be more restrictive than the advertising rules for e.g. legal advisers, trust companies, tax advisers, insurance companies and banks, as attorneys only are admitted to the bar—a difference which, pursuant to the FSC, allows stricter rules for attorneys and, therefore, unequal treatment of attorneys compared with other professions. Further, the FSC confirmed that the economic freedom, amongst which the freedom to advertise one's services, may be restricted in the interest of the public. It defined such public interest as the interest of all attorneys in an impeccable reputation of their profession together with the interest of the public in the protection from inappropriate and aggressive advertising.

For all these reasons, the FSC rejected the attorney's appeal and confirmed the formal reprimand.

Discussion

This case was not presented here to criticise it. It also was not presented to the readers so they might learn something from it for their daily practice. It was summarised in order to show the dos and especially the don'ts which Swiss attorneys have to consider when advertising their services. Against some tendencies internationally and in other fields of business, discretion and reputation are still regarded very conservatively and strictly. Some of you may find the restrictions which are imposed on us questionable or even ridiculous. However, we, the authors of this contribution, appreciate that the profession of the attorneys and its seriousness and reputation is well protected by the competent authorities—even though such restrictions might, admittedly, in some circumstances, set unwanted limits to creativity and the modernisation of our profession whether we specialise in sports law or any other field.

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