

BELGIUM



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1. Laws & Decrees	
Topic:	Advertising and Sponsoring on Radio and Television
Who:	Flemish Community – Parliament
When:	February 2, 2007
Where:	State Gazette, February 23, 2007
What Happened:	<p>The Decree of the Flemish Region of February 2, 2007 on changes of particular rules regarding radio and television provides, in relevant part, that</p> <ul style="list-style-type: none">- private television broadcasters, recognized by the Flemish Community or duly registered with the Flemish Regulator on Media, are empowered to air advertising, tele-shopping, sponsoring and messages of general interest;- the public television company of the Flemish Community can only bring advertising with a view on self-promotion and has the right to air messages of general interest;- the public television company of the Flemish Community has the right to air sponsoring. Sponsor mentioning is only allowed to contain the name of the sponsor, the trade name, the logo, the product, the name of the product, the service or the name of the service; mentioning is not to last longer than 5 seconds per sponsor and 10 seconds in total;- Within a period of 5 minutes prior to and following children's programs of the public television company of the Flemish Community, no sponsoring mentioning is allowed;- The public television company of the Flemish Community is not allowed to bring television shopping;
Comments:	The changes are important in practice. They also bring clarification on the respective rights on advertising, tele-shopping and sponsoring of private and public broadcasters in Flanders.

2. Case Report	
Topic:	Limits of the Parody Exception to Copyright – Advertising for Magazines
Who:	Court of Appeals, Brussels
When:	August 2006
What Happened:	<p>The depiction of a popular children's character in the context of cocaine use sparked a dispute involving the character's creator, the creator's publisher and the magazine publisher which used the offending image as a cover illustration.</p> <p>Miffy is an internationally renowned character in a series of children's books originally created by Dutch author and illustrator Dick Bruna.</p> <p>The April 2005 issue of the Belgian magazine <i>Deng</i> used a reproduction of Miffy's head on its cover, on its website and on publicity material. Miffy - known as Nijntje in Dutch, from the diminutive <i>konijntje</i>, meaning 'little rabbit' - was pictured with a drop of blood on its lips, a white line under its chin and the words "<i>Ieder zijn lijntje</i>" ('to each his own line'). The text, which rhymes with the name Nijntje, was, in combination with the picture, to be understood as a reference to drug use, with the white line under Miffy's chin representing a line of cocaine. The image was intended to illustrate the magazine's article on drugs.</p>

	<p>Bruna and his publisher claimed that both their copyright and their moral rights had been infringed, particularly in respect of the use of Miffy's image in the context of illegal substances, which they claimed was detrimental to Brunas's honour and reputation. A 'cease-and-desist' order was obtained against the magazine publisher; this decision was then appealed by the publisher. The Court of Appeal identified four theoretical and cumulative conditions which must be fulfilled in order for the parody exception to be invoked. A parody must:</p> <ul style="list-style-type: none"> • be an original work in itself; • serve a critical purpose; • be humorous; and • use only the basic and strictly necessary elements of the original in order to avoid confusion. <p>The court found that the magazine's cover illustration did not show sufficient originality. It was a direct copy; <i>Deng</i> had reproduced more elements of the original than had been necessary. The image used identical proportions, the same characteristic thickness of lines and an identical palette of bright and contrasting colours.</p>
Comments:	<p>The case prompted the Court of Appeal to consider to what extent a parody of a copyrighted work may infringe copyright and moral rights in the original. In the case of such a copy, the public could not be certain whether the illustration was the work of a parodist or the original artist. The illustration was not used to mock the original work in a humorous manner; the parodist had merely attempted to profit from the reputation of the original work in order to stimulate sales of the magazine.</p>

3. Case Report	
Topic:	Violence and Torture in Radio Ad
Who:	Citybank, advertising for yearly basic interest rate
When:	February 16, 2007
Where:	Self Regulation (JEP)
What Happened:	<p>The radio ad runs as a scene where a man is forced to confessions. A consumer complained with the Self Regulator.</p> <p>The advertiser observed that the ad should bring transparency through an easy offer instead of complex interest rates. Citybank brings the interest rate to life in the ad under the form of a person who is forced into confessions to say that he is not really 4%, but 2 + 1,5%. The advertiser emphasizes that this situation is utterly absurd and humoristic.</p> <p>The JEP considers that the metaphor (personification of an interest rate) is not clear with as consequence that the scene is not humoristic, but rather has a degree of realism which can be perceived literally by an average consumer, to wit as violence on a competitor to force him into confessions. The JEP also is of the opinion that a tolerance towards violence transpires from the ad. The ad lacks social responsibility. On the basis of the Code of the International Chamber of Commerce, the Decree of the French Community, the Code on Ethics in Advertising as well as recommendations for the JEP on the depiction of human beings, the JEP recommends stopping airing the ad.</p>
Comments:	<p>The case illustrates the almost zero tolerance towards the depiction of violence in advertising</p>

4. Case Report	
Topic:	Disparaging Statements on Countries of Competing Automobile Producers in a Print Ad
Who:	Korean Motor Company Hyundai
When:	January 16, 2007
Where:	Self Regulation Authority (JEP)
What Happened:	The ad shows, under the heading "Free your brains. Delete, some examples" four different images with short texts: image of typical French toilets with text "vacation souvenirs", image of the pop group Abba with text "Eurovision Song Contest 1976", image of five persons in traditional German outfit with a big glass of beer and an image of Snow White with seven dwarfs. "And put the special conditions of Hyundai in their place". The complaint shows images of France, Germany and Sweden as competing producing countries and damages the good reputation of those countries, more particularly the school course language German. The JEP declines the reproaches and considers that the message is clearly figurative, the ad cannot be understood wrongly by the public at large as a denigration of other countries or the German language. No infringement of self regulation or legal provisions can be found.
Comments:	This case shows how little is needed for an ad to give rise in Belgium to complaints by consumers with the Self Regulation Authority.