

Oddset not offered „only by Lotto“ – The Federal Court of Justice stops misleading Advertisements by the state operators

The Federal Court of Justice has found the advertisement slogan used by the Free State of Bavaria (the State Lottery Administration) „Oddset, the sporting bet with fixed quota, only by Lotto“ to constitute a misleading unique position advertisement and forbid it (decision of October 28th 2004 – I ZR 59/02). The Federal Court of Justice thereby restored the interdiction called for by the first instance court, the District Court of Munich I.

State operators must not boast about their unique position towards private operators. A consumer not knowing what to expect behind the term „Oddset“ due to the advertisement slogan, assumes that state lottery operators are the only ones to offer such sporting bets (which due to numerous private operators of sporting bets at fixed quotas is not the case). Therefore the advertisement was unfounded and misleading. The attacked advertisement also informed about the „Oddset“ bet being a bet at fixed quotas. It conveyed the impression to a consumer that this kind of sporting bet was uniquely offered by state-owned or state-proxy companies belonging to the Lottoblock.

A deviant understanding of the term „Oddset“ meaning that it constituted a mere (phantasy) name or a brand used by the Lottery-Administration, is – in the entire context of the attacked advertisement – out of the question, even and especially for those customers who are not yet informed and

therefore do not have a concrete idea about it.

The Federal Court of Justice's decision is to be considered as a slap in the face of the state Lottery Block. In the future this may not advertise being the only one offering sporting bets at fixed quotas anymore. This decision offers an interesting starting-point for private operators to confine the state operators' high-handedness, and their scruffy really inaccurate advertisement, with instruments of competition law.