[DE] Advertisements Making Use of Historic Figures of our Time

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In its judgement of 2 September 1999, the Oberlandsgericht Munich (Regional Court of Appeal - (OLG) fully endorsed the temporary injunction granted by the Landgericht Munich (District Court). The Landgericht (LG) had restrained the publishing house concerned from making use of a portrait of the plaintiff`s mother for commercial purposes, in particular for television advertising, inasmuch as this picture was not reproduced in the editorial section of the same issue of the newspaper being advertised. A general ban on the use of portraits in advertising, for which the plaintiff had petitioned, was refused by the LG.

The plaintiff`s deceased mother was an historic figure of contemporary history. The publishing house concerned had put out a TV advertisement for a supplement on contemporary history for inclusion in its newspaper, featuring a portrait of the mother. The plaintiff considered this as unacceptable.

The OLG referred firstly to the principle that the obligation under the Kunsturhebergesetz (the law on copyright of artistic works) § 23 para. 1 N° 1 (KUG) to accept portrayals is not unlimited § 23 para 2 (KUG). The general case for publication and public information had to be weighed against the right of privacy of the person portrayed. Graphic representations of historic figures did not require consent in the light of their historical significance. In the case at issue, special weight had to be given to the fact that the defendant`s primary interest was in advertising value. The person portrayed should not be turned into an object of commerce. The protection of the general public`s interest in being informed went only so far as making it aware of information also contained in the product on offer. Otherwise, it would be mere advertising, in which the use of portraits may not freely be made.

The OLG made a distinction between this case and others dealt with in case-law, in which the person portrayed on the cover is representative of the content.

Urteil des OLG München vom 2. September 1999; AZ 6 U 3740/99.

Judgement of the Court of Appeal of Munich of 2 September 1999; file N° 6 U 3740/99.

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