[DE] Federal Supreme Court Increases Protection of Posthumous Personality Rights in Advertising

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In two judgements of 1 December 1999, the Federal Supreme Court (Bundesgerichtshof - BGH) decided to award the heirs of deceased prominent figures the right to an injunction and, for the first time, compensation for unauthorised commercial use of images of the deceased.

In the first case, the producer of the musical "Marlene" had allowed a car manufacturer to bring out a "Marlene" model and had given permission for a cosmetics producer to advertise the so-called "Marlene-Look" using a portrait of Marlene Dietrich. He also arranged the production and sale of merchandise bearing a picture of Marlene Dietrich. In the second case, a company had advertised the eco-friendliness of its products using a reconstructed picture from Marlene Dietrich's film "The Blue Angel" rather than the usual environment emblem of a blue angel. Marlene Dietrich's daughter, as sole heiress, applied for an injunction and compensation. The courts of first instance rejected the claim for compensation, since posthumous personality rights only protected non-material, ie non-commercial interests.

Until now, case law has recognised the need to award compensation as well as offering protection to living prominent figures against images of them being published without their permission. If the person died, rights to the image of the deceased fell to the surviving relatives, so that publication of such images was illegal if prior permission were not granted and the relatives could demand an injunction or revocation, but not compensation. The same applied to advertising using images of contemporary personalities.

The Federal Supreme Court has now strengthened the legal position of deceased prominent figures. Since a person acting without the consent of the individual concerned should not be in a better position than someone who does have permission, the heirs, who are not necessarily the same as the relatives, should be entitled to compensation. This is necessary in order to prevent commercial profit arising from the deceased person's name, image or other personality trait from falling into the hands of third parties rather than to people close to the deceased.

However, in principal the use of personalities in the media remains possible, so the applicant must accept the portrayal of Marlene Dietrich's life story in a

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musical .

Urteil des BGH vom 1. Dezember 1999; AZ I ZR 49/97, I ZR 226/97.

Judgement of the Federal Supreme Court (Bundesgerichtshof BGH), 1 December 1999; case no. AZ I ZR 49/97, I ZR 226/97.

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