[DE] TV Satire Did Not Break Copyright or Competition Law

IRIS 2000-5:1/8

Kerstin Däther
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 13 April 2000, the 1st Chamber of the Bundesgerichtshof (Federal Supreme Court - BGH) decided that a satirical television programme did not breach copyright or competition law.

The object of the satire was a television show in which contestants had to guess the prices of various articles. Whoever was closest to the actual price could win the article concerned. The show was sponsored by the manufacturer of an incontinence medicine, which the presenter helped to advertise in a commercial shown during the TV show.

The satirical programme used original clips from the show, including the advertisement for the incontinence medicine, which was portrayed ironically as a means of facilitating urination. The effect of the product was demonstrated using excerpts from the commercial, with the TV show presenter as an example.

The BGH decided that the satire did not breach the plaintiff's copyright over the sequences taken from the TV show, nor belittle the programme material of a rival television broadcaster in such a way as to infringe competition law. The aim of the programme was not merely to ridicule the use of the incontinence medicine, but to portray the whole show as being mindless entertainment. It was true that original clips from the TV show were used, but they had been selected and arranged in order to produce genuine satire. This should therefore be considered as a new, independent work in the sense of Article 24 of the Urheberrechtsgesetz (Copyright Act - UrhG), not merely as an adaptation in the sense of Article 3 UrhG. As such, there was no need to obtain the author's consent to the publication and exploitation of his original work. The satirical programme may well be considered to have failed, to be tasteless or to be malicious. However, this had no bearing on whether it should be considered a free use of a protected work, nor on whether a personal intellectual creation should be treated as a protected work.

Similarly, competition law had not been broken, since the rival's broadcast of the satirical programme was protected by the provisions on freedom of broadcasting contained in Article 5.2 of the Grundgesetz (Basic Law). Even media criticism was among the protected areas of the press and broadcasters.

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BGH Urteil vom 13. April 2000 Az.: I ZR 282/97.

Judgement of the Bundesgerichtshof (Federal Supreme Court BGH), 13 April 2000, case no. I ZR 282/97.

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