[DE] Professional Football Clubs Entitled To Radio Reporting Fee

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In a first instance ruling of 26 April, the Landgericht Hamburg (Hamburg District Court) decided that professional football clubs are entitled to charge radio broadcasters who report live or otherwise from their stadia. The private radio broadcaster Radio Hamburg therefore lost a test case in which it had claimed that the clubs had no transferable or exploitable "radio rights".

On the contrary, the Hamburg District Court ruled that the clubs were entitled to control reporting from their respective stadia independently and that they therefore owned a commercial good which they were free to exploit. However, these rights were not directly derived from Article 1 of the UWG (Act against Unfair Competition) nor from the right to an established commercial enterprise, protected by Art. 823 of the BGB (Civil Code). Rather, they were part of the clubs' rights as "householders" over their own premises. The purchase of a match ticket alone could not entitle the holder to report from the stadium concerned, since radio reporters exploited football matches to a far greater extent than normal spectators, in particular in order to enhance the programme of the broadcaster for whom they worked. Therefore, football match organisers were entitled, as part of their rights as "householders", to demand a fee for allowing live or other kinds of reporting, above and beyond the simple reimbursement of costs. Match organisers could also prevent reporters who refused to pay such a fee from carrying out such activities.

In the Court's view, the radio broadcaster could not rely on the right to free reporting, protected by Article 5.1.2 of the Grundgesetz (Basic Law - GG), because this conflicted not only with the organiser's rights as "householder", but also with the freedom to choose an occupation, enshrined in Article 12 of the Basic Law. The organisers of professional football were dependent on revenue from the sale of broadcasting rights. Radio Hamburg intends to appeal.

Urteil des Landgerichtes Hamburg vom 26. April 2002 (Az.: 308 O 415/01)

Ruling of the Hamburg District Court of 26 April 2002, case no. 308 O 415/01

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