[DE] Possibilities for Exploiting Sports Events

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In a judgment dated 8 May 2008, the Stuttgart Regional Court (*Landgericht*) ruled that a video portal must not show film footage of amateur football games that fall within the responsibility of the Württemberg Football Association.

The court stated that the association held all exploitation rights as a co-organiser of the games, justifying this view by referring to the financial risk borne by the organiser and to the latter's responsibility for all the organisational aspects of a particular event. The fact that, *inter alia* , the Association organised the games, drew up the fixture lists, trained referees and provided a system of sports tribunals, justified its being attributed the status of a co-organiser. The judges held that making available the footage of amateur football games via the operator of the video portal, constituted the direct adoption of the plaintiff's product by the defendant, within the meaning of section 4(9) of the Gesetz gegen den unlauteren Wettbewerb (Unfair Competition Act – UWG). Moreover, the Football Association's efforts to market the games that it organised were impeded within the meaning of section 4(10) of the UWG. Furthermore, the fact that the work carried out by the Association only constituted so-called "advance work" (*Vorleistungen*) was no obstacle to the assumption that the Association was a co-organiser and that its work was, accordingly, subject to additional legal protection. The court assumed that the necessary competitive relationship existed because the plaintiff, the football association, also intended to exploit amateur football games in the future, including on the Internet. It also established that the operation of the defendant's Internet portal was not the result of any effort on the part of the defendant as regards content.

The right to exploit football games is an issue that has occupied the courts in the past. In the year 2000, the Bundesliga clubs Hamburger SV and FC St. Pauli and their marketing organisation DFL demanded a fee for the first time for live and other reporting from the stadium, referring to their exploitation rights. The Bundesgerichtshof (Federal Court of Justice – BGH) ruled on 8 November 2005 that Bundesliga clubs may demand fees for live reporting by radio broadcasters, thus dismissing an action for a declaration brought by a radio broadcaster that objected to paying this fee. In its reasoning, the court noted that a radio broadcaster made greater use of the access it was granted to a stadium and to the game organised there than a normal spectator, or even a representative of the press. After losing the case in 2005, the broadcaster filed a constitutional complaint with the *Bundesverfassungsgericht* (Federal Constitutional Court –

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BVerfG), the decision of which is still pending.

Urteil des LG Stuttgart vom 8. Mai 2008 (Az. 41 O 3/08 KfH)

http://lrbw.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&GerichtAuswahl=Landgerichte&Art=en&Datum=2008&nr=10220&pos=1&anz=13

Judgment of the Stuttgart Regional Court of 8 May 2008 (Case 41 O 3/08 KfH)

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