

[DE] Federal Supreme Court Confirms Copyright Protection of Literary Figures

IRIS 2013-9:1/10

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In its decision of 17 July 2013, the Bundesgerichtshof (Federal Supreme Court - BGH) ruled that the copyright protection afforded under the Urheberrechtsgesetz (Copyright Act - UrhG) to books and stories, for example, also applied to literary characters. In the case at hand, the court decided that the children's character "Pippi Longstocking" created by Astrid Lindgren was copyright protected as a "work of language" in the sense of Article 2(1)(1) UrhG. The combination of external features and specific personality traits justified the protection of a fictional character.

The decision was based on the following facts. In January 2010, the defendant, a retail operator, had advertised carnival costumes using photographs of a girl and a young woman who looked like the literary figure Pippi Longstocking. The persons pictured both wearing red wigs with pigtails, T-shirts and socks with red and green stripes. The images appeared in brochures, on posters and on the defendant's website.

The plaintiff, who owned the exploitation rights for Astrid Lindgren's artistic creations, argued that the defendant's advertising had breached its copyright over the Pippi Longstocking character and therefore demanded compensation equivalent to the cost of a fictitious licence fee of EUR 50,000.

The BGH confirmed, in principle, that the literary figure Pippi Longstocking was protected by copyright if there was an unmistakable association with the character's external features and personality traits. However, according to the judges in Karlsruhe, there had been no copyright infringement in this case. Copyright in such a figure was not breached if only a few external features were used, since it was the combination of appearance, personality, abilities and behaviour that was protected by copyright. External characteristics such as hairstyle, freckles and clothing were not enough on their own. This applied even if, as in this case, the similarity to the literary figure was clearly visible.

The court therefore rejected the appeal. It did not comment on any claims that the defendant might have had under competition law and referred the case back to the court of appeal for a new hearing and decision.

Pressemitteilung des BGH vom 18. Juli 2013 (Az. I ZR 52/12)

<http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=pm&Datum=2013∓Sort=3&nr=64705&pos=0&anz=126>

