

[DE] “Lookalike Advertising” Illegal Even Without Physical Resemblance

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In a ruling of 14 August 2013, the Landgericht Köln (Cologne District Court - LG) decided that advertising using a double of a famous person can be inadmissible even if there is no similarity between the facial features and external appearance of the double and the famous person. The famous person may be recognisable thanks to other details that characterise the person concerned.

The complaint concerned a TV commercial for the defendant, a furniture store, which included a scene from a TV quiz show in which a presenter wearing glasses and a dark suit had asked a contestant the “all-important question” in front of a studio audience. The set had been illuminated with blue light and dramatic music had been played, representing clear parallels with the quiz show “Wer wird Millionär?” (Who Wants to be a Millionaire?), which was presented by the well-known presenter Günther Jauch. Striking features such as the studio layout, lighting and music, as well as the format of the quiz, had all matched those of the programme. Jauch had publicly announced in mid-2011 that he no longer wished to take part in advertising. The presenter shown in these commercials bore no close resemblance whatsoever to him.

The LG Köln upheld the complaint. Under Article 22(1) of the Gesetz betreffend das Urheberrecht an Werken der bildenden Künste und der Photographie (Act on copyright in works of art and photography - KUG), images of a person could only be distributed with the consent of the person concerned. The character portrayed in the commercial represented such an image of the TV presenter. Physical resemblance was unnecessary in this case. At least if the person concerned was very famous, they could be recognised through the imitation of certain attributes associated with them. In view of Günther Jauch’s fame as the only presenter the quiz show “Wer wird Millionär?” had ever had, such imitation had been carried out in this case.

In addition, the images could not be considered as photographs of current events that could be published without consent in accordance with Article 23(1)(1) KUG, since their publication did not meet any protected public interest. The commercials were exclusively designed to serve the economic interests of the company concerned. In any case, the plaintiff’s right to protection outweighed that of the defendant, particularly since the use of the plaintiff’s image gave the

impression that he identified himself with the advertised product.

The defendant was ordered to withdraw the commercial and to pay an appropriate fictitious licence fee in accordance with Article 812(1)(1)(2) of the Bürgerliches Gesetzbuch (Civil Code - BGB), since economic value was inherent in the use of the image. The plaintiff's announcement that he would no longer take part in advertising was irrelevant, since the licence fee represented compensation for the infringement of his rights rather than proof that he had given his consent.

Urteil des LG Köln vom 14. August 2013 (Az. 28 O 118/13)

<http://www.schertz-bergmann.de/aktuelles/130814-lg-koeln-jauch-28O118-13.pdf>

Ruling of the Cologne District Court of 14 August 2013 (case no. 28 O 118/13)

