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Image rights of celebrities vs. public interest – striking the right balance under German law

***by Dr Corinna Coors*[1]**

Introduction

Image right protection, in particular with respect to personalities, has a long tradition in Germany compared with UK law. German law fully recognises a right of personality and provides explicit statutory protection against the unlawful commercial exploitation of an individual's image. Moreover, German courts have gained reputation for expertise on the treatment of personality rights by carefully balancing the constitutionally guaranteed conflicting interests of the parties in many cases.[2] The issue of infringement of personality rights in unlicensed merchandise cases has been the subject of much legal activity in Germany over the past 40 years.[3] Pop stars, TV celebrities as well as famous athletes have sought protection against the commercial use of their images without their consent. High profile cases have involved, for example, the former football national player and coach, Franz Beckenbauer and the three-time Wimbledon Champion Boris Becker**.** This article analyses the background and latest developments in the case-law in Germany which deals with the commercial exploitation of an individual's personality as a special form of manifestation of the general right of personality. It will be considered how the German Federal Court of Justice strikes the balance between legitimate public interest in a celebrities' personality and a mere business interest and whether this balance has recently shifted towards the image rightholder.

Overview - The protection of image rights under German law

Elements of the German right of personality

In Germany, a general right of personality has been recognised in the case law of the German Federal Court of Justice (*Bundesgerichtshof)* since 1954 as a basic right constitutionally guaranteed by Arts. 1 and 2 of the Basic Law (*Grundgesetz*) and protected in civil law under sects. 823 (1), 1004 of the German Civil Code (*Buergerliches Gesetzbuch*).[4] The fundamental

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[2] The German right of personality and privacy has received much attention from academics and practitioners in the UK in the wake of the development of UK law under the Human Rights Act in 1998. As, for example, Lord Wilberforce, who was a Lord of Appeal in Ordinary in the House of Lords from 1964 to 1982, stated in his Foreword to Professor Basil Markesinis' *Always on the Same Path. Essays on Foreign Law and Comparative Methodology* (2001) vol. II, Hart Publishing: "The German approach shows us the way, avoiding the brutal simplicity of the First Amendment, to work out a balance between the right of free speech and the right of privacy....".

[3] See, for example, BGH of 14 February 1958 - *Herrenreiter* -, BGHZ 26, 349; BGH of 20 February 1968 - *Ligaspieler* - GRUR 1968, 652, 653; BGH of 6.2.1979, VI ZR 46/47 - *Franz Beckenbauer* - NJW 1979, 2203 ff.; BGH of 14 October 1986, VI ZR 10/86 - *Nena -,* GRUR 1987, 128; BGH of 15 November 1994, VI ZR 56/54, - *Caroline von Monaco I* – BGHZ 128,1; BGH of 19 December, VI ZR 15/95 – *Caroline von Monaco III* – BGHZ 131, 332; BGH of 1 December 1999, I ZR 49/97 - *Marlene Dietrich* - , BGHZ 143, 214; BGH of 26.10.2006, I ZR 182/04, - *Oskar Lafontaine -;* BGH of 11 March 2009, I ZR 8/07 - *Günther Jauch -,* NJW 2009, 3032; BGH of 29 October 2009, I ZR 65/07 - *Boris Becker* -, GRUR 2010, 546; BGH of 31 May 2012, I ZR 234/10 - *Gunter Sachs* - NJW 2013, 793.

[4] Constant case law since BGH of 25 May 1954, I ZR 211/53 - *Schacht-Brief* - BGHZ 13, 334.

right guarantees the protection of human dignity and the right to free development of the personality, protecting any person against the unauthorised use of specific aspects of their personality.[5] Due to the special nature of the right of personality as a framework right, its scope is not absolutely fixed, but may include several aspects of an individual's personality.[6] One recognised aspect of an individual's personality is the right in one's own picture.[7] Sec. 22 s. 1 of the German Copyright Act (*Kunsturhebergesetz - KUG*) guarantees the freedom for an individual to determine how he presents himself to the public. The use of the image of a personality for advertising or commercial purposes, therefore, generally requires consent of the depicted person. This right is, however, limited according to sec. 23 (1) no. 1 of the KUG for persons of contemporary history. Such persons may have become the focus of public attention in such a way that the general public is to be granted an interest, justified by a genuine need for information, in a pictorial representation.[8]

Until recently the German courts divided public figures of contemporary history into two groups: relative figures of contemporary history - those in whom there is public interest only due to a single event, such as victims of a crime or a war and absolute figures of contemporary history - those who stand out from the rest of society for example because of their political position or individual fame, for example the Queen, or David Beckham. However, following a complaint of the European Court of Human Rights (ECtHR) in the famous Princess Caroline von Hannover decision regarding her long fight with German magazines for showing pictures of the Princess on holiday with her family[9], the German Federal Court dropped this distinction and has recently adopted a concept of graduated protection.[10] This concept requires the courts to consider in each individual case whether the image concerned is part of the sphere of contemporary history.[11] This approach has been held as in line with constitutional principles by the German Federal Constitutional Court (*Bundesverfassungsgericht*)[12] and it has also been confirmed in a recent judgment of the ECtHR, giving important clarification on the criteria relevant for balancing the conflicting rights of the parties in cases concerning the image and privacy rights of celebrities.[13]
Although sec. 23 (1), No.1 of the German Copyright Act generally allows the depiction of persons of contemporary history, this limitation is displaced according to sec. 23 (2) of the KUG if a justified interest of the person of contemporary history portrayed is violated by the dissemination of the picture. Whether this is the case is determined by a balancing exercise in which it has to be decided whether the status of the general right of personality of the person

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[5] BGH of 14 February 1958 - *Herrenreiter* - BGHZ 26, 349.
[6] BGH of 9 December 2003 – VI ZR 373/02 - *Luftbildaufnahmen* – GRUR 2004, 438.
[7] BGH of 1 December 1999, I ZR 49/97 - *Marlene Dietrich* - , BGHZ 143, 214. See Juergen Helle (1991), *Besondere Persoenlichkeitsrechte im Privatrecht*, p. 47; Norbert Dasch (1990) *Die Einwilligung zum Eingriff in das Recht am eigenen Bild*, p. 101.
[8] BGH of 8 May 1956, I ZR 62/54 - *Dahlke* - BGHZ 20, 345; BGH of 10 May 1957, I ZR 234/55 - *Spaetheimkehrer* - BGHZ 24, 200.
[9] ECtHR of 24 June 2004 - 59320/00 and ECtHR of 28 July 2005 - 5932/00.
[10] BGH of 6 June 2007 - VI ZR 13/06 - GRUR 2007, 523.
[11] BGH of 26 October 2010 - VI ZR 190/08 and VI ZR 230/09 - *Rosenball in Monaco* – GRUR 2011, 259.
[12] BVerfG 26.02.2008 - 1 BvR 1602/07.
[13] *Von Hannover v Germany (No. 2)* ECtHR of 7 February 2012 – 40660/08 and 60641/08. *See* for example: Corinna Coors, *Headwind from Europe: The New Position of the German Courts on Personality Rights after the Judgment of the European Court of Human Rights*, 11 German Law Journal 527-538 (2010); Judith Janna Marten, *Personality rights and freedom of expression: a journey through the development of German jurisprudence under the influence of the European Court of Human Rights* (2012) Journal of Media Law, 4(2), 333-349; Franz Hofmann (2010) *The right to publicity in German and English law*, Intellectual Property Quarterly, 3, 325-340.

portrayed deserves priority against the legal position claimed for the picture.[14] In summary, the courts have to strike a balance between the illegal exploitation of someone's personality protected by Arts. 1, 2 (1) of the German Basic Law, 8 (1) ECHR and the public's right of information protected by Arts. 5 (1) of the Basic Law, 10 (1) ECHR. This means that several freedoms granted by the German Constitution can form a justification for exploiting someone's personality commercially.[15] On the other hand a person who is only using the picture of another to satisfy his business interest cannot refer to the protection in Art. 5 (1) of the German Basic Law.
It should be noted that English Courts are not traditionally familiar with the application of the above described balancing exercise based on constitutional guarantees.[16] However, they came closer to it in the cases *Douglas v Hello!* and *Naomi Campbell v Mirror Group Newspapers* which required the English court to operate compatibly with the European Convention on Human Rights (ECHR) and to assess whether according to Art. 8 ECHR the celebrities in the cases had a reasonable expectation of privacy and whether this right of privacy would interfere with the right of freedom of expression as protected in Art. 10 ECHR.[17]

German case law on image rights

The issue of infringement of personality rights in unlicensed merchandise cases has been the subject of much legal activity in Germany over the past 40 years.[18] In Germany, the general position of the courts was that, while the media should be allowed to report on celebrities, politicians and other people of general interest, reporting should not be allowed for the purpose of exploiting celebrities commercially without prior consent.[19] It took the German courts a while to determine the notion of commercial exploitation within the meaning of the KUG as almost every newspaper or advertisement shows images of a well-known person to attract readers and to increase the number of sales.[20] The German Federal Court of Justice pointed out in the *Nena* decision that unlicensed merchandising was usually designed to capitalise on the fame of the stars.[21] The case concerned the unlawful merchandising of T-shirts that depicted the image of the famous German singer Nena. The licensee sought protection against competitors distributing various fan merchandising articles bearing the singer's name and image despite the existence of an exclusive licence agreement. The claimant succeeded on the basis of an action for unjust enrichment, and was awarded a fictional fee on the basis that the defendants had been spared the payment of the licence fee payable to the claimant.[22]

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[14] BGH of 28 May 2013 – VI ZR 125/12, GRUR 2013, 1065.
[15] BGH of 1 December 1999, I ZR 49/97 - *Marlene Dietrich* - , BGHZ 143, 214.
[16] Douglas W. Vick (2002), *The Human Rights Act and the British Constitution*, Texas International Law Journal, Vol 37, pp 329-372 (368) 1998 at 106.
[17] *Campbell v MGN Ltd* [2004] UKHL 22.
[18] Georgios Zagouras (2011) *Commercial exploitation of the personality and license requirements for satiric advertisements under German law* International Review of Intellectual Property and Competition, 42 IIC: 74-96.
[19] BGH of 1 December 1999, I ZR 49/97 - *Marlene Dietrich* - , BGHZ 143, 214, *see* Guido Westkamp, *Personality rights, unfair competition and extended causes of action*, in: Nari Lee, Guido Westkamp (et al) (2014), *Intellectual property, Unfair Competition and Publicity, Convergences and development*, Edward Elgar Publishing Limited, UK, p. 61.
[20] BGH of 6.2.1979, VI ZR 46/47 - *Franz Beckenbauer* - NJW 1979, 2203 ff.
[21] BGH of 14 October 1986, VI ZR 10/86 - *Nena -,* GRUR 1987.
[22] A claim for payment of a reasonable licence fee can either be based on compensation for harm under secs. 823 (1), 847 or of unjustified enrichment (*Ungerechtfertigte Bereicherung*) under sec. 812 (1) of the BGB, see BGH of 14 February 1958 - *Herrenreiter* -, BGHZ 26, 349.

The Franz Beckenbauer case

In the following years the German Federal Court of Justice gave further guidance on the distinction between lawful and unlawful use of celebrities' images on merchandise articles. The former must be done primarily in order to illustrate a certain form of information.[23] On the other hand, merchandising occurs, if a picture is primarily used for selling and therefore for marketing and promotion of a certain product.[24] In this connection the predominant fact is that, by using a picture the image or advertising value of the person depicted is exploited, and the impression is given that the person depicted identifies himself with the advertised product, or recommends or extols it.[25] Commercial advertising clearly falls into the second category and would therefore require consent of the rightholder according to sec. 23 (2) KUG. The German Federal Court of Justice stressed in many decisions the high value of the public interest in being informed properly which should prevail over the celebrity's interest in not being exploited if someone is depicted in the context of a newsworthy event, for example a football match.[26] The German Federal Court of Justice consequently applied this principle in a case involving the German football icon Franz Beckenbauer. The case concerned the use of photographs taken during a football match against Greece, showing Mr Beckenbauer in a real match situation for a wall calendar without any prior licensing. First of all, the German Federal Court of Justice clarified that Mr Beckenbauer has to be considered as a public figure of contemporary history. Consent for the use of his images was therefore generally not required according to sec. 23 (1) no. 1 KUG. However, the court also made clear that even public figures of a certain historic interest may not have to tolerate the use of the picture without their permission, if the main purpose of the depiction is the commercial exploitation of the personality of the public figure in terms of promoting goods and services. In the end the Federal Court of Justice had to decide whether the public had an interest in being informed about the concrete scenes of the football match against Greece and whether this interest prevailed over Mr Beckenbauer's general right of personality protected in Arts. 1 and 2 (1) of the Basic Law.[27] The German Federal Court of Justice held that the public interest prevailed in this case on the basis that the pictures on the wall calendar showed Mr. Beckenbauer "in action", allowing the public to experience a real match situation as it had happened on the pitch during an important football match. The photographic images brought the event to life and made the viewer a virtual spectator at it. The court concluded that the picture's context was therefore of an informative nature and this intention to visualise the information prevailed over the potential infringer's interests.

The Panini Case

In the "Panini-case", in comparison, which dealt with the use of pictures for a sticker album, the German Federal Court held that there was no public interest with regard to pictures in the collection.[28] In this case the German Federal Court had to decide whether using portrait pictures of national league football players requires their prior permission and therefore a licence. The case concerned a producer of sticker albums who entered into several licence agreements with various players of the German Football League granting him the exclusive

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[23] BGH of 1 December 1999, I ZR 49/97 - *Marlene Dietrich* - , BGHZ 143, 214.
[24] District Court (Kreisgericht) of 30 September 1980, UFITA 90 (1981), 163, 165 - *Udo Lindenberg* – concerning the portrait of a famous rockstar on the cover of his biography.
[25] BGH of 29 October 2009, I ZR 65/07 - *Boris Becker* -, GRUR 2010, 546.
[26] BGH of 20 February 1968 - *Ligaspieler* - GRUR 1968, 652, 653; BGH of 1 December 1999, I ZR 49/97 - *Marlene Dietrich* - , BGHZ 143, 214; BGH of 9 June 1965 - Ib ZR 126/63 - *Spielgefährtin* -.
[27] BGH of 6.2.1979, VI ZR 46/47 - *Franz Beckenbauer* - NJW 1979, 2203 ff.
[28] BGH of 20 February 1968 - *Ligaspieler* - GRUR 1968, 652, 653.

right to distribute portrait pictures as collector's items. Despite these exclusive rights, the defendant continued producing sticker albums with pictures of the players of the German national football team. The German Federal Court held that the images of the football players were used predominantly for commercial purposes and that there was no public interest in the use of their image. The notable difference between the Beckenbauer and the Panini case is that in the Panini case the athletes were shown as portraits and therefore deserved protection, while in the Beckenbauer case the player was depicted "in action". This fact alone justified an interest of the public in being informed in such an event which outweighed Mr Beckenbauer's general right of personality protected in Arts. 1 and 2 (1) of the Basic Law.

The Oliver Kahn case

The same principles as in the Panini case were applied In the case of the former German goalkeeper *Oliver Kahn v EA-Sports*, where the Hamburg Court of Appeal held that consent by Oliver Kahn was required for the use of his name and image in a computer game, because Mr Kahn's image was used for commercial purposes and there was no public interest in the use of Mr Kahn's name or image.[29]
The case concerned the complaint of Mr Kahn about the usage of his image and his name by the defendant in the computer game "FIFA Soccer Championship 2002" and its marketing campaign. Electronic Arts had been granted permission to use images of footballers both from the German Bundesliga and the European Football Players Federation, but Mr Kahn was not a formal member of either organisation. The Hamburg Court of Appeal granted an injunction which stopped the sale of the game in Germany and held that the use of the name and image of Kahn without his prior consent in the advertising campaign was unlawful. The court held in favour of Mr Kahn and argued that the main intention of the defendant was to create and distribute a realistic game for financial gain and profit. The defendant was not fulfilling any interest of the general public in information, for example, by providing additional geographical information about the host country, the sporting venues or the football tournament, which would have been worthy of protection, but was only using the picture of Mr Kahn to satisfy his business interest. On this basis the court ruled that the claimant did not have to tolerate the use of his picture in the computer game without his consent.

The Boris Becker cases

The requirement of consent was also rejected by the Frankfurt Court of Appeal in a case concerning tennis star Boris Becker's action against the publication of a tennis instruction book that depicted his image on the cover. The court argued that even though the use of the claimant's image on the cover was clearly designed to capitalise on his fame, the book also explained and opposed various tennis techniques of famous tennis players. The Court concluded that in this respect the press freedom and freedom of interest to inform the public protected by Art. 5 (1) of the Basic Law about the content of the book outweighed the claimant's right of personality.[30]
In a more recent case Boris Becker took action against the unauthorised use of his image for a promotional campaign in the German newspaper "Frankfurter Allgemeine Sonntagszeitung" on their front page.[31] The paper had run a promotional campaign in 2001 which used a mock

[29] Unreported, 13 January 2004, OLG Hamburg.
[30] OLG Frankfurt of 11 January 1988, NJW 1997, 402.
[31] BGH of 29 October 2009, I ZR 65/07 - *Boris Becker* - GRUR 2010, 546.

front page showing a picture of Becker, together with the words, "the faltering favourite". The image was used for advertising purposes across Germany and could be seen on television as well as in newspapers. Mr Becker claimed from the defendant payment of a fictional licence fee of over 2, 37 million euro. The court ruled generally in favour of the defendant who was protected by the press freedom and freedom of interest to inform the public about the content and the layout of their new magazine. The court argued that the promotional campaign in the case could not be compared with a depiction of the claimant in a proper edition of the newspaper. Even though the image was used in an advertisement, and was used by the defendant to direct attention to its newspaper, the image was not used to exploit the advertising value of the prominent claimant. Moreover, the defendant did not give the impression that the claimant identified himself with the advertised product, or recommended or extoled it. The claimant therefore had to tolerate the lawful publication of photos for the purpose of the short term marketing campaign in support of the upcoming publication of the newspaper. The German Federal Court, however, made it clear that the title of the advertisement should have been changed after the publication of the first edition of the newspaper and granted the claimant a fictional licence fee of 1.2 million euro from the time the promotional campaign ended in November 2001.[32]

A fictional licence fee was also awarded in a case concerning Günther Jauch, the host of the German version of the famous TV show "Who Wants to Be a Millionaire?"[33] The facts of the case were that the front cover of a quiz magazine showed a picture of Günther Jauch together with the words, "Günther Jauch demonstrates with "Who Wants to Be a Millionaire?", how exciting a quiz can be". The magazine itself contained no further article or other information on the topic. The previous instances had denied Günther Jauch's claim for payment of an appropriate licence fee, but the Federal Court of Justice reversed the decision of the Court of Appeal.

The court argued that in this case, the heading on the front cover - the only contribution apart from the image itself - contained little to no informational value. It only created a reason to include Mr Jauch's image on the front cover while at the same time benefitting from his high profile. The court concluded that Mr Jauch's image was used to exploit the advertising value of the prominent claimant. In this situation, the claimant's right to publicity outweighed the public's right of information.

In the *Günther Jauch* case the German Federal Court of Justice clearly required a certain level of informational value for the public, without precisely determining, when this level, that shifts the balance in favour of the public's right of information, is reached. The general guidance of the courts is that the greater the value of the information for the public, the more the protected interest of the person about whom the information is given must give way to the public's information interests.[34] The Federal Court of Justice made clear that not only serious journalism, but also entertainment articles can result in formation of opinion and may have an informational value.[35] While each case is different and must be decided on its own facts, patterns and policy considerations, the balancing exercise of the German Federal Court of

[32] In another case regarding the unlawful use of Mr Becker's image in a promotion brochure by the company "Saturn", Mr Becker was awarded 158.000 euro in fictional fees by the Munich Appeal Court see OLG München, 21 U 2677/02 -*Saturn* -.

[33] BGH of 11 March 2009, I ZR 8/07 - *Guenther Jauch -,* NJW 2009, 3032.

[34] BGH of 1 December 1999, I ZR 49/97 - *Marlene Dietrich* - , BGHZ 143, 214.

[35] BGH of 9 December 2003 – VI ZR 373/02 - *Luftbildaufnahmen* – GRUR 2004, 438.

Justice would benefit from further clarification on what is required to provide a sufficiently high level of informational value for the public. It currently remains unclear, for example, if the information must relate to the profession or expertise of the image rightholder. Could Boris Becker, a tennis star, in this respect, object to the use of his picture on a football instruction book? Moreover, does the information have to be new, unusual or different? Finally, to measure the degree of public interest in the celebrity, is it sufficient to look at the amount of media coverage devoted to his or her public or private life?

The Oskar Lafontaine case

As noted above the increase of market value by using a celebrity picture is not per se unlawful under German law. The constitutional guaranteed right of freedom of expression in Art. 5 (1) of the Basic Law also covers expressions of opinion and mere commercial advertisements that have an opinion-forming character. This was recognised for the first time in the Oskar Lafontaine case, where just one day after the resignation of Germany's former Minister of Finance Oskar Lafontaine, the car company SIXT used portraits of him and the entire German cabinet in an advertisement. However, Lafontaine's face was crossed out. The advertising slogan read as follows: "SIXT leases cars even to employees on probation". The former minister considered this advertisement as an infringement of his right of personality and as an illegal commercial exploitation of his popularity. Accordingly he claimed fictitious royalties from the car rental company. However, the German Federal Supreme Court held that these pictures were part of the defendant's satirical comment on a current event which centred on the claimant. Even though the political comment was made in an advertisement, and was used by the defendant to direct attention to its leasing business, it was under the special protection of freedom of expression of opinion in Art. 5 (1) of the Basic Law. The German Federal Court therefore concluded that in this case the exercise of this freedom prevailed over the claimant's interest in not being depicted in an advertisement without his permission.

By contrast, in another recent case concerning Gunther Sachs, a famous photographer and former husband of the French actress Brigitte Bardot, the German Federal Court ruled that the publication of his picture without his consent was unlawful. The facts of the case were that Mr Sachs was pictured reading the weekly tabloid "Bild am Sonntag" on his yacht. This picture of him was later published in "Bild am Sonntag". The heading of the picture read: "Gunter Sachs reads Bild am Sonntag – so do more than eleven million Germans". Ruling in favour of Mr Sachs, the court clarified that Mr Sachs was a person of public interest according to sec 23 (1) KUG and that a balance of interests was required. On the one hand the report contained information about Sachs' reading habits. On the other hand Mr Sachs had been used by the publisher for advertising his newspaper although Mr Sachs had not recommended the newspaper explicitly. The court concluded that the pictures combined with the report and the heading connected Mr Sachs with the advertised product. The advertising character was the report's focus. Sachs' reading habits could hardly be described as news, therefore the claimant's right of personality would prevail over the publisher's rights in Art. 5 (1) of the Basic Law.

The Martin Kaymer case

In the most recent decision concerning the image rights of a sports celebrity the Duesseldorf Court of Appeal once again had to balance the constitutionally guaranteed personality rights,

this time against the freedom of the art as guaranteed in Art. 5 (3) of the Basic Law.[36] The claimant, the German professional golf player Martin Kaymer, sought an injunction forbidding the distribution and publication of portraits which the defendant had offered both on his website and on an internet auction platform. The images showed a photo of the claimant, which the defendant had turned into pop art portrait by using several colour combination styles. One of the portraits had been sold for 43,50 Euro. The claimant considered that his right to his own picture and his personality right were violated by the defendant's photos. The defendant claimed that the portrait was covered by artistic freedom under Art. 5 (3) of the German Basic right, fulfilling a higher interest of the general public in information.

The appeal court found that the dissemination of the portrait without the claimant's permission violated the claimant's personality rights, namely his right to deal with his portrait.[37] The defendant was not fulfilling any interest of the general public in information, but was mainly using the portrait to satisfy his business interest. The court further considered that rather than being an achievement of fine art, the portrait had mainly decorative character. Consequently, the claimant's interest in the protection of his personality rights prevailed over the defendant's right to freedom of art.

In its decision, the appeal court has in principle recognised that the manipulation of a photo of a celebrity is a creative art form in itself that requires skill and precision. While even images of very low creative quality, for example, a simple retouched photo or a silhouette, may fall under the protection area of the freedom of the arts protected in Art. 5 (3) of the German Basic Law, the style, quality level and content of the art can play a role in the assessment of whether artistic freedom must yield to conflicting constitutional interests.[38] The decision also sets forth the tendency of German courts to rule in favour of celebrities whose personality features are exploited for merchandising products as in the *Nena* decision.[39]

Conclusion

The picture, name and other characterising features of the personality have always been capable of being exploited commercially and in particular of being used for advertising purposes. However, in the past decades due to changed technical advances, features of the personality have become economically exploitable to an extent not previously known. In Germany, the use of the image of a personality for advertising or commercial purposes generally requires consent, unless there is an overriding public interest in the information. The public interest may prevail if the image is not exclusively used to advertise cars, cosmetics and promotion articles but for example, to show different techniques of athletes in a book or to provide additional information about the life or work of a person in general. The German Federal Court of Justice has in this respect worked out a functioning balance between the right of free speech and the right of general personality. Even though the balance has slightly shifted towards more protection of image rightholders after the *Caroline of Hanover* judgment, the high value of the public interest in being informed properly has been recognised in recent decisions of the German Federal Court of Justice. It has been demonstrated, however, that the German Federal Court should clarify its position on the

[36] OLG Duesseldorf of 23 July 2013 - I-20 U 190/12.
[37] BGH of 8 May 1956, I ZR 62/54 - *Dahlke* - BGHZ 20, 345.
[38] BVerfGE 83, 130 - *Mutzenbacher*, BVerfGE 75, 369 [377]; 81, 278 [291].
[39] BGH of 14 October 1986, VI ZR 10/86 - *Nena -,* GRUR 1987, 128.

required level of informational value for the public to avoid legal uncertainty. While each case is different and must be decided on its own facts, the balancing exercise of the German Federal Court of Justice would benefit from further clarification on what is required to provide a sufficiently high level of informational value for the public. Nonetheless, the protection provided to images by German law is much broader than in the UK and generally sufficient to protect a personality against the use of images for advertising purposes.