



Legal Opinion

on Copyright Protection of Advertising Ideas, Advertising Concepts and Advertising Campaigns

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This analysis explains the legal theories guiding agency copyright in Germany.

Summary of the Results

1. Advertising creations are communicative works that in their full range belong to the category of "literature, science, and art" protected by the Copyright Act.
2. The function of copyright is not only to protect elite works of "pure" art and literature, but as a part of economic law is also meant to protect business creations. In order to comply with the above necessities in their full range, small-scale creations should be protected without limitation. This should equally be done for the field of applied art in advertising, especially for advertising designs. Copyright protection cannot be made dependent upon an increased "artistic level of creation".
3. Advertising concepts have to be qualified as complex works sui generis. In their multi-layeredness, they are comparable to film works and digital works of multi-media. In order to judge copyright protection, all elements should be taken into account that have been combined by the concept. In some cases, qualification as a collection (Sec. 4 Copyright Act) may be possible. Yet qualifying advertising concepts as a complex work sui generis would do more justice to advertising concepts. The open catalogue of works stipulated in Sec. 2(1) Copyright Act allows for the protection of advertising concepts as complex works even under the present law.
4. Both form and contents of advertising concepts plus a connection of both can be protected. Advertising ideas enjoy protection as elements related to the contents of advertising concepts insofar as advertising ideas reveal individual characteristics.
5. Protection of advertising concepts has to be granted against the



unsolicited use or imitation by third parties as well as against the unsolicited use as regards form and content especially of advertising ideas in advertising campaigns of third parties. In the same way that protected elements of literary works may not be used for further sequences, protected advertising concepts and its protected elements may not be continued without proper permission of the right holder.