

Full title of law or regulation	<p><u>Federal Court of Justice Decisions</u>: two ground breaking decisions on the unsolicited use of celebrities in advertising (without asking their permission): involving ironic-satirical analysis of a contemporary historical event...</p> <p><a href="http://dejure.org/dienste/vernetzung/rechtsprechung?Text=I%20ZR%20182/04">http://dejure.org/dienste/vernetzung/rechtsprechung?Text=I%20ZR%20182/04</a></p>
Title of relevant section	N/A
SIXT and Lafontaine	<p>1) BGH, judgment of 26.10.2006 - I ZR 182/04:  <a href="http://dejure.org/dienste/vernetzung/rechtsprechung?Text=I%20ZR%20182/04">http://dejure.org/dienste/vernetzung/rechtsprechung?Text=I%20ZR%20182/04</a></p> <p>Detailed:  <a href="http://www.telemedicus.info/urteile/Allgemeines-Persoeneichkeitsrecht/Personen-der-Zeitgeschichte/Prominente/209-BGH-Az-I-ZR-18204-Werbung-mit-Politikerfoto-Lafontaine.html">http://www.telemedicus.info/urteile/Allgemeines-Persoeneichkeitsrecht/Personen-der-Zeitgeschichte/Prominente/209-BGH-Az-I-ZR-18204-Werbung-mit-Politikerfoto-Lafontaine.html</a></p> <p>or summary:  <a href="http://medien-internet-und-recht.de/volltext.php?mir_dok_id=468">http://medien-internet-und-recht.de/volltext.php?mir_dok_id=468</a></p> <p>Shortly after his inauguration as German minister of finance the then chairman of the Social Democrat Party, Oscar Lafontaine resigned. At which point, SIXT Leasing announced through an advertising campaign that they also “lease cars to employees during their probationary period” (<i>Sixt verleast auch autos für mitarbeiter in der probezeit</i>) Ad here:  <a href="http://www.gregsregs.com/downloads/DEGenSixtLafontaine.jpg">http://www.gregsregs.com/downloads/DEGenSixtLafontaine.jpg</a></p> <p>SIXT are well known for advertising using portraits of famous people (in another case, SIXT promoted that their rental cars are also available in Alicante, Spain – just after Ulla Schmidt’s (German Minister for Health at the time) official car was stolen in Alicante “Using the company car on holiday? There is SIXT – also in Alicante”).</p> <p>Oscar Lafontaine requested compensation of €100k from Sixt and failed in his action.</p>
Lucky Strike and Prince August of Hanover and Dieter Bohlen	<p>2) BGH, judgment of 05.06.2008 - <a href="#">I ZR 96/07 (Detailed and summary)</a></p> <p>Lucky Strike used reports of Prince August of Hanover’s assault of a Kenyan nightclub owner (beating up Josef Brunlehner) as an opportunity to run the following advert:  <a href="http://www.gregsregs.com/downloads/DEGenLuckyStrike.jpg">http://www.gregsregs.com/downloads/DEGenLuckyStrike.jpg</a></p> <p>The ad shows a beaten-up cigarette packet, with the slogan “Was that Ernst? Or August?”. He demanded €60k as compensation for the unsolicited use of his name.</p> <p>Another Lucky Strike case involved the music producer Dieter Bohlen, a judge on TV talent show (<i>Deutschland sucht den Superstar</i>; ‘Germany Seeks a Superstar’). The Lucky Strike advert poked fun at his 2003 autobiography <i>Hinter den Kulissen</i> (‘Behind the Scenes’) – which Bohlen ended up releasing with a number of the passages redacted after several celebrities threatened legal action. This was picked up by the Lucky Strike ad poster, which read, “Look, Dieter, this is how you write books,” with several other words blacked out:  <a href="http://www.gregsregs.com/downloads/DEGenLuckyStrike2.jpg">http://www.gregsregs.com/downloads/DEGenLuckyStrike2.jpg</a></p> <p>The court ruled that companies were allowed to satirise current events in advertising campaigns; in both instances, the complainants (Prince August and Bohlen) lost before the German Federal Court of Justice; they then took legal actions against the Federal Republic of Germany before the European Court of Human Rights (ECHR) and were dismissed again.</p> <p>In both cases, the BGH rejected the complaints and set out the following principles:</p> <ul style="list-style-type: none"> <li>• In principle, the portrait of a prominent person should not be used for advertising purposes.</li> <li>• In principle, however, commercial expression, i.e. advertising, can also be protected by freedom of expression (Art. 5 (1) Basic Law (GG))</li> <li>• This, however, is only the case when the advert serves not only serves the economic</li> </ul>

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interests of the company (pure attention/ publicity) i.e. advertising purpose, but also provides significant information for the general public.

- Information content for the public applies in particular when the advertisement refers to a current social or political event and comments (satirically, ironically, or in a mocking way) on it.
- However, it is not sufficient if only the image or advertising value of the prominent person is exploited, without reference to the concrete event.
- This is especially true if the impression is given that the prominent person identifies with (recommends) the advertised product.
- Decisive factor for the use of names or portraits within advertisements: the image value or the advertising value of the affected person is not transferred to the advertised product. You can't use the image to exploit the advertising value of the prominent personality – transferring it to the advertised product. The advertisement must not give the impression that the affected person recommends the product.

In the case of Lafontaine, the BGH found that the advert was sufficiently concerned with the politically significant resignation of Lafontaine as Federal Minister of Finance and not Lafontaine, the person, and dismissed his action. The ad was a current, ironic-satirical analysis of a contemporary historical event which neither transferred the image value or the advertising value of Mr. Lafontaine to the product nor gave the impression that Mr. Lafontaine recommended rental cars from SIXT.

Likewise, Prince August of Hanover lost because the BGH also saw here a sufficiently interesting discussion with his life as a media-driven person of contemporary history.

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