**CJEU – The Taste of a Food Product is not Eligible for Copyright Protection**

The taste of a food product is not eligible for copyright protection. That was the verdict of the Court of Justice of the European Union (CJEU) in a ruling from November 13, 2018 (Az.: C-310/17).

Intellectual creations and expressions can be classified as a “work” and protected by copyright. We at the commercial law firm GRP Rainer Rechtsanwälte note, however, that according to this ruling by the Court of Justice of the European Union the taste of a food product cannot be classified as a work and consequently is not eligible for copyright protection.

The case before the CJEU involved a dispute between two cheese producers. A Dutch company with the rights to a particular spreadable cheese took the view that a similar-tasting cheese from a supermarket chain infringed its copyright in the taste of its cheese, claiming that the taste of the spreadable cheese constitutes a work protected by copyright and that the cheese belonging to the supermarket chain is a reproduction of that work.

The CJEU did not follow this line of reasoning, ruling instead that in order to be protected by copyright, the taste of a food product must be capable of being classified as a work. Classification as a work requires that the subject matter concerned is an original intellectual creation. Copyright protection may be granted to expressions, but not to ideas, procedures, methods of operation or mathematical concepts. Accordingly, a work needs to be expressed in a manner which makes it identifiable with sufficient precision and objectivity. The CJEU held that the taste of a food product cannot be identified with precision and objectivity.

The Court went on to state that unlike pictorial, literary, musical or cinematographic works that have a precise and objective expression, the taste of a food product is subjective. This subjective experience is variable and depends on, among other things, factors particular to the individual tasting the product in question, such as their age, preferences, etc. The Court also held that it is not possible in the current state of scientific development to achieve by technical means a precise and objective identification of the taste of a food product. The CJEU therefore concluded that the taste of a food product is not eligible for copyright protection.

Even though the taste of a food product cannot be protected by copyright, it may be possible to extend copyright protection to the product itself. Lawyers with experience in the field of IP law can advise on matters pertaining to copyright and trademark law.

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