

Real Madrid v. Betting Agencies – What is behind the wave of proceedings by Real against European bookmakers?

On the 26th of February 2004, „Der Spiegel“ reported in its online edition that Real Madrid and some of its stars, e.g., Luis Figo, Zinedin Zidane and David Beckham had lodged multi-million euro claims against seven well known international sports betting providers. Why: Allegedly, many bookmakers had advertised their online offers on their online-sites using photos of Beckham, Ronaldo and other Real stars without obtaining permission from the Spanish football record holders, Real Madrid, or its stars.

One thing is certain: If Real are successful with their first claim, numerous large football clubs in the European Leagues will follow Real Madrid's example. Numerous sports betting providers will have to deal with claims or change their online and offline appearance.

What are the chances of success for Real in Germany?

To evaluate this question, a look should be taken at the Copyright Act (on Works of Art and Photography, Kunst-Urhebergesetz“, KUG). Under this Act, “the person portrayed”– e.g., the individual Real Madrid stars – is protected. Under Art. 22 of the KUG, which the Spanish football club will with all likelihood invoke, “portraits” (photos) may only be circulated with the “consent of the person portrayed”.

An exception to the necessity of consent is provided for by Art. 23 of the KUG. According to this article, no consent is necessary for „Public Persons, (Personen der Zeitgeschichte)“.

Photos and film shots of such persons may not be circulated because of the general right to privacy of the individual.

The area of public persons is fundamentally quite wide; it contains everything which draws the attention of the public (see Schricker, Urheberrecht, Kommentar, 2nd ed., Art. 60/Art. 23 KUG, margin no. 8).

Absolute public persons are those who are regularly in the limelight. The Real Madrid stars are without doubt "absolute public persons" as they have drawn the limelight on themselves with their personality cult type publicity and advertising. If pictures are taken of such media stars independent of an event then their "right of privacy of the individual" is infringed. An infringement of the general right of privacy of the individual is regularly affirmed where the name, image, or other characteristics of a person is used without contractual agreement for external tangible aims so that the dignity and freedom of display of the person is infringed. This applies in particular to advertising. It is because of their broad appeal and interrelated attractiveness for advertisers that an infringement to this privacy of the individual right is found particularly often in relation to popular public persons such as football stars or Hollywood actors.

That is the crux of the matter on which the dispute will ultimately be decided.