Germany

“Pippi Longstocking Costume (Pippi-Langstrumpf-Kostüm)”

Copyright Act, Secs. 2(1)(1), 23, 24(1)

Decision of the Federal Supreme Court (Bundesgerichtshof)
17 July 2013 – Case No. I ZR 52/12

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1. An individual character of a literary work (here: Pippi Longstocking) can enjoy independent copyright protection on condition that the author gives this character a distinctive personality through the combination of pronounced character traits and particular physical features. Here a strict standard must be applied. As a rule, the mere description of a character's outward form or physical appearance will not suffice.
2. The decisive factor for distinguishing an illicit imitation pursuant to Sec. 23 of the Copyright Act from free use within the meaning of Sec. 24(1) of the Copyright Act is the congruence in the objective features that constitute the original's creative uniqueness. To find unlawful imitation of a character in the sense of Sec. 23 of the Copyright Act, it is therefore not sufficient for a representation (here: a picture of people in Carnival costumes) to adopt only isolated external attributes of the literary character. These elements may characterise the outward appearance of the character of a novel. And yet they do not suffice in and of themselves to establish copyright protection of the character and thus likewise do not in isolation partake of the protection of the literary character.
3. If it is clear from the depictions in suit that the persons shown are only dressing up as the literary character for purposes of celebrating Carnival and thus merely intend to step into that role, this supports the assumption of an internal distance to the work and thus a free use according to Sec. 24(1) of the Copyright Act.