

Iyi Günler

Welcome ladies and gentlemen !

by

Dr. Peter Schotthöfer

Attorney-at-Law

Munich/Germany

© 2008 Dr. Peter Schotthöfer, Rechtsanwalt, München

“Revolution“ in German advertising law ?

Why “revolution“ ?

- The first German advertising law (Gesetz gegen unlauteren Wettbewerb = UWG) came into force on

7th July 1909

What happened during these 99 years ?

- Invention of the airplane
- Invention of the automobile
- Albert Einsteins theory of relativity
- World War I + II
- Treaty of Rome 1957
- 1990 .. Internet
etc.

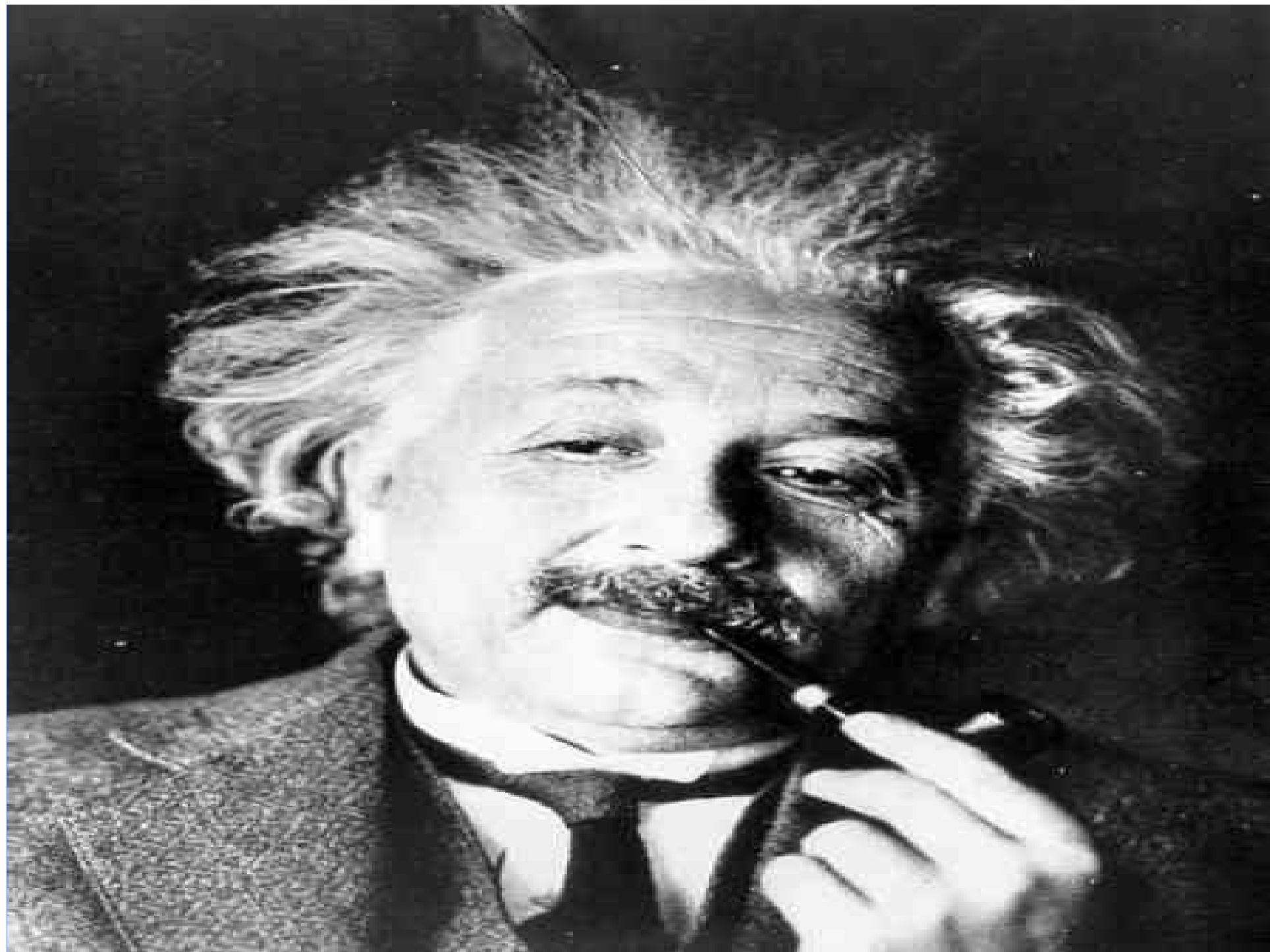
(flugfähiger Nachbau)



1909



1909





**Detroit Auto Show
2008**

What happend during ..

- 1932: Free gift law: You get a gift if you buy something

(“Zugabeverordnung“ = promotional gifts regulation)

- 1933: Rebate law came into force

(„Rabattgesetz“)

What happened during ..

Several amending laws came into force e.g.

- 1938: German Supreme court held:

Comparative advertising is illegal

- 1950 and later:

Special sales law (Saisonverkäufe)

The “revolution“:

- 1997: EU – Directive regarding
Comparative advertising implemented
> comparative advertising became legal
- 2001: Rebate law > cancelled

The “revolution“:

- 2001: Free gift law („Zugabeverordnung“)
 - > cancelled
- 2004:
 - Special sales law)
 - (Saisonsales: „Winter-“, „Summer-“, „Schlussverkäufe“ etc.)
 - > cancelled

2004: New unfair Competition Law (UWG)

- A new unfair competition law (UWG) has been in force since

8th July 2004

Why “revolution“ ?:

- “Bad-mannered behaviour“
as automatically unfair competition

> cancelled

In the past an ad was misleading

- if 15 % of the consumers feel misled
 - > misleading advertising
 - > cancelled
 - > today: not yet fixed, ca. 25 – 30 %

Why “revolution“?: Change in standards

- The ECJ says:

The consumer is

„reasonably well informed and reasonably observant and circumspect,,

Why “revolution“?: Change in standards

- That means:

the “typical German consumer“ was

“uninterested, not informed, superficial“

This standard was changed because of the EC
into the

“interested, informed, alert“ consumer

Why “revolution“?: Examples

- In 2001/2002 introduction of €
Only „€“ as price indication was misleading
- Signification as „Monastery beer“ misleading if the distance between brewery and monastery is 2 km („Klosterbräu“)
- Bavarian Beer only allowed in a „Bayern-festhalle“
(Bavarian Festival hall)



- In a “Bayernfesthalle“ in Cologne
„Warsteiner beer from „Nordrhine-Westfalia“
only was offered (socalled „Warsteiner Beer“)
- The Higher Court of Cologne held:
„Warsteiner Beer“ in a „Bayernfesthalle“ in
Cologne is misleading

Consumers in Cologne want Bavarian beer only
in such a „Bayernfesthalle“

The legal background of the changes

- Art. 28 of the EU-Treaty forbids internal market restrictions
(e.g ECJ Case Yver Rocher)
- EU–Regulations had to be included in German national law
(Directives, Regulations)
- ECJ - European Supreme Court – became Germany's Highest Court

German Constitutional Court strengthened commercial communications

- Commercial communication is – as well as the freedom of speech - under the protection of Article 5 of the Constitution (Grundgesetz)
- The long way of the Bennetton Case through the instances

Benetton ad

- December 1993

This person is marked



- The first courts held this ad as violation of the law (LG Frankfurt, OLG Frankfurt)
- The German Supreme Court (BGH) held this ad as violation
- The German Constitutional Court (BVerfG) asked the BGH for a new decision
- The BGH held again Bennetton`s ad illegal
- The BVerfG held again it is not illegal
(BGH > BVerfG > BGH > BVerfG)

The courts held

- At least:

Bennetton advertisement did not violate unfair competition law because it is ill-mannered advertising

- BVerfG: Even ad with “strange“ motives is lawful

The BVerfG held also

- Lawyers can advertise their services
 - eg. Member of the national sports team (rhythmic gymnastics)
 - because the membership can be of interest for clients

Corporate Social Responsibility (CSR) became legal

- Call for helpfulness, sympathy, environment-consciousness
- A court held in 1994:
advertising by a pharmacy with support of an action group for protection of species is illegal
- The BGH held in 2005:
It is not illegal

Some specifications from Brussels

- Misleading Advertising Directive 84/450/EWG
- „Health Claim Regulation“

Regulation 1924/2006 on nutrition and health claims made on foods (OJ L 404, 30.12.2006)

- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices

The European law influenced and is still influencing the German advertising law by

- EU–Treaty
- Directives
- Regulations
- Decisions by the ECJ

Thank you for your
attention !

Dikkatiniz icin Tesekküredirim

© Dr. Peter Schotthöfer
Rechtsanwalt

Grillparzerstrasse 38

D - 81675 München

Tel. 089 – 890416010

Fax. 089 – 47 32 71

eMail: pwsjur@schotthoefer.de

HP: www.schotthoefer.de