



## **Same protection for works of applied art as for works of fine art - Copyright Law**

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Dusseldorf, Frankfurt, Hamburg, Munich, Stuttgart and London - [www.grprainer.com/en](http://www.grprainer.com/en) conclude: In its Decision of November 13, 2013 (File number: I ZR 143/12), the Federal Supreme Court (BGH) dealt with the question whether the requirements for achieving copyright protection are the same for works of applied art as for works of fine art. This followed an action by a toy designer who demanded further payment for a work of art she had designed - above and beyond the remuneration agreed upon and already paid for. She based this on the very successful sales of the toy she had designed. The lower courts had dismissed her action.

The BGH judges considered previous BGH rulings, according to which works of applied art must meet specific requirements to be protected as industrial designs, and that toy designs do not meet such requirements. Upon appeal by the plaintiff, the BGH set aside the earlier decision, stating that the opinion expressed by the BGH until now is no longer valid, since the requirements changed when the industrial design law was reformed in 2004.

The new regulations for the protection of industrial designs no longer require a certain degree of creativity, only that the design must be distinct. Moreover, industrial design protection and copyright protection can exist side by side. For those reasons, different requirements for works of applied art are not justified.

However, the Court added one limitation. The plaintiff is entitled to additional remuneration only for the period after the amended industrial design law came into effect. For the utilization of the designs prior to June 1, 2004, no additional remuneration was required since the defendant could rely on the BGH's previous case law. Now, the appeal court has to check whether the toys designed by the plaintiff meet the simple requirements for copyright protection.

Copyright law is a very complex subject. The examination of copyright should be left to an experienced lawyer. In particular, interaction with other fields of the law, such as the law pertaining to film, photos or trademarks, can lead to problems. With the help of a lawyer, claims can be exercised and violations can be averted.

<http://www.grprainer.com/en/Copyright-Law.html>

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Anlage: Bild

