

Abstract

Protection of Applied Art in German Judicial Precedents - Focusing on Copyright Law -

Cha, Sang-Yook*

In Germany, the copyright protection threshold for works of applied art was somewhat high due to the so-called “Stufentheorie” established in the case of protecting applied art. German judicial precedents held that the minimum amount of creativity alone would not satisfy the requirements for originality could not be met. In other words, the German “Stufentheorie” is a standard for judging the works of applied art and is a method of thinking that requires a high level of creativity.

The objective of this “Stufentheorie” approach was to maintain the meaningful coverage of design legislation to avoid the full overlap of copyright law and design law on design protection. However, in a November 2013 ruling on the ‘Geburgstagszug’ case, the Supreme Court of Germany explicitly abandoned the conventional “Stufentheorie”.

As a representative case of taking a traditional theory, the so-called ‘Silverdistel’ case took protective standards that required relatively high creativity compared to other works. The German “Stufentheorie” was only valid in terms of legislative history and protection contents, based on the continuous systematic relationship between Germany’s Old Design Act (1876 legislation, abolished 2004) and the Copyright Act..

In short, the Supreme Court of Germany has explicitly declared the abandonment of the “Stufentheorie”. In other words, a “Stufentheorie” approach is now difficult to find, given the

* Associate Professor, Law School, Kyungpook National University / Ph.D. in law.

protective attitude of German applied art related to Post Geburtstagszug after Germany's ruling on the 'birthday train I' in 2013. In this regard, the high standard of creativity now has only historical meaning.

Keywords

Applied Art, Stufentheorie, Silberdistel case, Geburtstagszug case, Criteria for judging Originality. Kleine Münze