

amounted to a copyright infringement, or whether the consent had mere obligatory effects between the parties. In the latter case, the plaintiff's rights were possibly limited to damages for breach of contract or tort against the other co-producer or to unjust enrichment. The Court indicated that the Court of Appeal, to which the case was referred back, might have to ask the European Court of Justice for a preliminary ruling on this issue.

**FILM****Film fund investment***Prospectus liability, Misrepresentation*

**LT** Film production; Finance;  
Germany; Misrepresentation;  
Prospectuses  
Federal Supreme Court  
July 19, 2004  
II ZR 157/02

**Facts:** An investor carries the risk of the failure of his investments. But if he was lured into the investment by wrong assertions in a prospectus or if he made them after misrepresentations, he may be able to claim damages. Here the investments were made on the basis of a prospectus of a film fund company, which traded in the acquisition and the exploitation of licences, particularly relating to film and television rights. The prospectus explained that in the first place television rights in 42 cinema films would be financed, by an investment of DM13,125,000. In the second place films would be produced and co-produced. In a letter of 1989, the defendant, representing the film fund company, asked the investors whether they agreed with preferential treatment of the second part of the investment plan, and, having obtained their consent, proceeded with the production of a film. In 1991, the film fund company became insolvent. The plaintiff asserted that the defendant made a misrepresentation to the investors.

**Held:** The Federal Supreme Court held that the defendant, when asking the investors in his letter for their consent to the modification of the investment plan by anticipating the investment in the film to the investment of the acquisition of television rights, had misrepresented the position by concealing the fact that at the time of the writing of the letter, only DM3.4 million had been collected, whereas the fund capital for the first part of the investment plan indicated a sum of DM13.125 million. Instead of providing this information, the defendant created the (wrong) impression that the first part of the investment plan had not been realised, because the licence contracts on the exploitation of the films were not yet signed by the broadcasting organisations. It weighed against the defendant that he did not inform the investors that by consenting to the anticipation of the second part of the investment plan they waived their claims to a repayment of their investments made for the first part of the investment plan, which, according to the prospectus, could be made if the capital for this part of the fund was not subscribed by March 31, 1990. Since the prospectus indicated that a total loss of the investments was excluded, the concealment of these facts and the indication that the anticipation of the second part of the investment plan did not increase the risks deriving from the investments, amounted to a misrepresentation by the defendant made to the investors, who would not have consented to the anticipation of the investment plan's second part, had they been informed on these facts.

PROF. ARNOLD VAHRENWALD

## Hungary

**TRADE AND SERVICE MARKS****Trade mark "ZETA"**

**LT** Confusion; Hungary;  
Pharmaceuticals; Registration;  
Similarity; Trade marks  
MSP Singapore Company  
Metropolitan Court  
1.Pk.26.744/2004/4

MSP Singapore Company, an applicant attempting to register "ZETIA" being a word mark, lodged an appeal against the Decision of the Hungarian Patent Office refusing registration (hereinafter HPO) to the Metropolitan Court. The Metropolitan Court allowed the Appeal and ordered registration of the mark covering cardiovascular preparations listed in class 5.

The applicant filed an application for the registration of the word mark ZETIA on April 1, 2002 for the goods listed in goods Class 5 as per the Nice Agreement covering pharmaceutical, veterinary and sanitary products, dietary materials for therapeutic use, baby food, bandage/dressings; dental filling material, dental modelling material; disinfectants; pesticides, fungicides and herbicides.