

6. ECTA Case Law Reports

Not Every Character Gets a Title: The BGH's *Money Penny* Decision and the Limits of German Work Title Protection

WHAT IS 'WERKTITELSCHUTZ'? A QUICK PRIMER FOR NON- GERMAN PRACTITIONERS

FICTIONAL CHARACTERS CAN BECOME CULTURAL ICONS — THINK OF SHERLOCK HOLMES, PIPPI LONGSTOCKING OR YODA. BUT CAN THE NAME OF A FICTIONAL CHARACTER ITSELF ENJOY PROTECTION AS A WORK TITLE UNDER GERMAN LAW?

FROM A DOCTRINAL PERSPECTIVE, IT IS ALREADY SOMETHING OF AN EXCEPTION THAT GERMAN LAW ALLOWS THE NAME OF A FICTIONAL CHARACTER TO QUALIFY FOR PROTECTION AS A WORK TITLE AT ALL. THE GERMAN FEDERAL COURT OF JUSTICE'S (BGH) DECEMBER 2025 *MONEYPENNY* DECISION SERVES AS A REMINDER THAT THIS EXCEPTION HAS CLEAR LIMITS — AND THAT THOSE LIMITS ARE REACHED SOONER THAN RIGHT HOLDERS MIGHT EXPECT.

THE DISPUTE CENTRED ON WHETHER 'MONEYPENNY,' THE LONG-STANDING CHARACTER FROM THE JAMES BOND UNIVERSE, COULD QUALIFY FOR 'WERKTITELSCHUTZ' (WORK TITLE PROTECTION), I.E. WHETHER IT COULD ENJOY PROTECTION AS AN UNREGISTERED RIGHT UNDER GERMAN TRADE MARK LAW. SPOILER ALERT: SHE COULDN'T. THIS ARTICLE OUTLINES THE FUNDAMENTALS OF GERMAN WORK TITLE PROTECTION, EXPLAINS THE BGH'S REASONING IN *MONEYPENNY*, AND HIGHLIGHTS THE IMPLICATIONS FOR RIGHT HOLDERS WHO RELY ON CHARACTER-BASED BRANDING AND MERCHANDISING.

¹ Decision of 4 December 2025 – I ZR 219/24 – 'Money Penny'.

German law protects two categories of 'business identifiers' that can be protected as non-registered signs, according to sect. 5 para. 1 and 3 German Trade Mark Act:

- i. trade names (*Unternehmenskennzeichen*), and
- ii. work titles (*Werktitel*).

Work titles are identifiers for intangible works such as books, films, music, software, apps, websites, magazines and other content-based products. They serve to indicate which work the user is dealing with, not where it comes from. Think 'The Economist', 'Fortnite' or 'The Godfather'.

The key points of the German system are:

- **Origin via use:** Unlike trade marks, work titles arise automatically through use in commerce as a title.
- **Scope:** The protection is narrow — primarily against confusingly similar titles for similar types of works.
- **Function:** Titles identify works, not companies or product lines. Their aim is to distinguish one work from another.
- **Threshold:** The requirements for distinctiveness of a work title are decidedly lower than with trade mark (or copyright) protection. Unlike copyright

law, a separate concept of a work applies here under Sect. 5 of the German Trade Mark Act.

- **Work concept:** The 'work' need not be a copyright-protectable work. It simply must be an intangible output that the public perceives as independently nameable.

This last point is where fictional characters enter the picture: Can a character itself qualify as such an independently nameable 'work'? The case law has long been receptive to this idea — but only under specific conditions.

CAN A FICTIONAL CHARACTER BE A PROTECTABLE WORK TITLE?

The German debate predates *Money Penny*. Courts and voices in literature have accepted that the name of a fictional character can be a protectable work title — but only if:

- i. **The character itself constitutes a work (or work part)** in the sense of an 'immaterial result of creative effort,' and
- ii. **The character is sufficiently independent** from the underlying film/book/series to be recognised as a self-contained object of designation by the public.

WHY 'MONEYPENNY' FAILED AS A WORK TITLE

Lack of independent work character

The BGH confirmed that, in principle, fictional characters can constitute immaterial works capable of title protection. However, this requires that the character must be sufficiently individualised and perceived by the public as independent of the underlying work. Crucially, that independence must arise from the character's depiction in the original work itself — not from subsequent commercial use.

In *Money Penny*, the Court found that this standard was not met. The character lacked a consistent visual depiction, her traits were too vague, and no clearly defined persona existed that the public would recognise outside of the James Bond universe. Outside that context, no distinct 'image' of the character emerged.

Accordingly, the Court rejected the notion that 'Money Penny' functioned as a shorthand for an archetypal 'perfect secretary' or a symbol of professional competence. Without sufficiently concrete, work-immanent characteristics, the figure lacked the individuality required for work title protection.

Merchandising cannot create independence

The claimant pointed to extensive secondary exploitation of the name 'Money Penny', including management literature, coaching references, licensed products such as luggage, the book series *The Money Penny Diaries*, and promotional co-operations for luxury watches. The BGH held that none of these uses could compensate for the lack of distinctiveness in the character's portrayal within the films themselves. While downstream commercialisation may support trade mark rights, it cannot retroactively establish the independence required for work title protection.

Not every name used recurrently in a film is a title

The Court also stressed that merely naming a character repeatedly in a film does not amount to use as a work title. The name identifies a person inside the story, not a work as such. Therefore, the necessary use as a title was missing as well.

In short: a character may receive title protection, but only if it has enough distinctiveness and presence to stand apart from the base work. The BGH acknowledged that principle again in *Money Penny* — but set strict boundaries on how independence must be demonstrated. In particular, the connection to the underlying work prohibits seeking evidence of the figure's independence outside of it.

THE MONEYPENNY CASE: BACKGROUND AND CLAIMS

The claimant, tied to the Bond franchise, challenged the use of 'Money Penny' by a German company providing administrative support, training, and franchise services under that name. The defendants owned German and international word marks for 'Money Penny' in classes relating to office tasks, training and consultancy.

The Bond-side asserted several grounds, but in the revision procedure only one remained relevant: Does the name of the Bond character 'Money Penny' enjoy German work title protection, and if so, does the defendants' use infringe it? The BGH's answer: No. 'Money Penny' is not a protectable work title because the underlying fictional character lacks the necessary independent work character.



PRACTICAL TAKEAWAYS FOR IP PRACTITIONERS

Character names are not automatically work titles

The BGH draws a clear line: character names, even famous ones, are not automatically protected under German work title law. Right holders cannot rely on title protection unless the character itself is a standalone object of public identification.

Independence must be work-inherent

If a right holder wants to rely on work title protection for a character, the independence must arise from the character's depiction:

- consistent appearance or visual traits;
- distinct personality;
- recurring and characteristic presence in the work;
- stable recognition independent of the core series.

Where the character is mostly contextual, work title protection is unlikely.

Consider alternative protection strategies

Since Spin-offs, merchandise, product

placements or cultural references do not expand the scope of German work title protection, right holders should not rely on it as a primary protection strategy. Instead, they should:

- register character names as trade marks early;
- monitor and adjust coverage for relevant classes;
- protect visual depictions separately where appropriate.

FOR RIGHT HOLDERS, THE LESSON IS SIMPLE AND PRACTICAL

While German work title protection can provide a useful layer of unregistered protection, it is the exception rather than the rule — particularly for fictional characters. The *Money Penny* decision underscores that achieving fame and licensing success may not be sufficient to meet the legal threshold for independent work title protection. For iconic characters, trade mark law remains the safer bet. «



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