[GB] Norowzian v. Arks Ltd and Others

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An important decision was made by the Chancery Division in the UK Courts for all agencies thinking of preparing commercials relying simply on production techniques. From now on they should be aware that third parties may be able to freely copy such commercials. In the cases of Norowzian v Arks Ltd and others the Plaintiff made a film of one man dancing to music. The film was then edited using a technique to create the illusion that the dancer performed physically impossible movements. The first Defendant used the idea to advertise the product of the second and third Defendant. Although the Defendant's film was significantly different from the Plaintiff's, it did make use of the editing technique that characterised the Plaintiff's film. The Plaintiff brought an action claiming infringement of copyright, arguing that the film was a recording of a "dramatic work" within the meaning of s.1(1)(a) of the Copyright, Designs and Patents Act 1988. However, it was held that to be a "dramatic work" for the purposes of the 1988 Act, the work had to be capable of being physically performed. The editing process had created the illusion of the dancer performing physically impossible movements; therefore the film was not a recording of a "dramatic work". That conclusion meant that the originality comprised in a film maker's art could not be protected by the 1988 Act, it was not open to the court to give a forced construction to the meaning of the terms used in the statute; and, accordingly, the claim failed.

Norowzian v. Arks Ltd and others, Chancery Division. Full transcript of the decision in The Times 27 July 1998.

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