[FR] Counterfeit of a Brand-Name and Infringement of Copyright on The Internet

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The Internet host Altern.org has again been sanctioned by the courts, this time - following the Estelle Hallyday case (see IRIS 1999-3: 3), in which it was found that access providers were liable for the circulation of unlawful content - for counterfeiting a brand-name and infringement of copyright. In the present case, there was a site devoted to sadomasochism at Altern.org under the domain name of calimero.org. The site's home-page contained the heading la page francophone de Caliméro ("Caliméro's page in French") and in the centre of the screen an exact reproduction of the character in the Caliméro cartoons followed by the character's "catchphrase" c'est trop injuste ("it's not fair"), was referred to the courts by the Italian authors of the character, and the site was declared to be counterfeit by the judges of the regional court (TGI) in Paris in a judgment delivered on 24 March 2000. Since the case involved not only copyright but also trade-mark law and unfair competition, the defendants were both the author of the site and the now famous Mr Lacambre and his company Altern.org.

In application of Article 5 of the Bern Convention, the Italian authors of Caliméro were found fully justified in claiming the protection of their rights in France, as it was beyond question that the Caliméro character had been famous internationally since 1963, as had the phrase c'est trop injuste which was part of the character. The exception that allows parody, pastiche or caricature could not be claimed as the name and the character were reproduced exactly. Their reproduction thus constituted an infringement of the moral and property rights of the various beneficiaries. The court also established quite clearly the counterfeiting of the international semifigurative Caliméro brand-name.

However, the most interesting aspect of the decision lies in the fact that, once again, it holds the site host liable even though it had decided to stop hosting the site, the content of which was to be prohibited to minors, and had asked the author to change to a different server. The court noted indeed that Mr Lacambre, whose defence was based on the fact that his company Altern.org hosts more than 47 000 sites and that it was therefore technically impossible to monitor each one, could not be unaware of the domain name and address of the site and consequently the infringements of copyright and of brand-name law which it contained. His liability therefore arose on the basis of Article 1382 of the Civil Code, particularly as for some months he had allowed a hypertext link between the old counterfeiting address and the new address.

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Tribunal de grande instance (TGI) de Paris, 24 mars 2000.

Regional court (TGI) of Paris, 24 March 2000.

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