[FR] Parasitic Use of a Cinematographic Film in an Advertisement

IRIS 2004-5:1/12

Amélie Blocman
Légipresse

Is the film The Fifth Element a victim of its own success? Apparently, as illustrated by a recent ruling by the Regional Court in Paris in a case the producer and director of a film brought against the cell phone company SFR and the advertising agency Publicis on the grounds of infringement of copyright and parasitic use. Luc Besson and the company Gaumont claimed that, in a major advertising campaign for a new service offered by the phone operator, the defendants had presented the actress who starred in the film, Mila Jovovich, in the appearance and costume of the main character in the film, placing her in situations and decors very close to those of the film, thereby appropriating the investments made for the film.

Regarding copyright infringement, the Court recalled that an advertising campaign may constitute the plagiarism of a cinematographic work if the campaign shows a number of similarities and points in common with the film, particularly as regards the subjects dealt with, the situations used, the development of the plot, the illustration of ideas, and the characteristic features of the characters and the production. In the case in question, Luc Besson claimed that the advertising campaign had made use of the physical appearance of the film's heroine, Leeloo, characterised by her red hair, her whitestriped costume and her supernatural powers, and of the futuristic urban decor in which the action takes place. However, the Court found that the characteristic features of the character that could be protected could not be limited to just two elements of her physical appearance, and that those concerning the decor were related to a genre, the decor of a major metropolis, and could not be protected by copyright. There were therefore insufficient similarities for plagiarism to be proven.

However, the Court recalled that anyone, in return for payment and without justification, who draws substantial inspiration from another's economic asset without it being absolutely necessary, thereby gaining a competitive advantage and benefit from another's intellectual work and investment, commits a wrongful act of parasitic misconduct. The choice of the actress Mila Jovovich for the advertising campaign was not fortuitous since it made it possible, through the character she portrays in the advertising, to immediately attract the attention of a specific group of the population (young city dwellers between the ages of 24 and 35), because they would immediately identify her with the symbolic character from The Fifth Element, as she has its physical characteristics (clothing and hairstyle). This behaviour, which the Court held to be parasitic, had definitely

© European Audiovisual Observatory (Council of Europe) 2026

caused the company Gaumont commercial prejudice for which, having regard to the scope of SFR's campaign (2,000 showings of the television advertisement, 180,000 posters, inserts in 150 newspapers, etc), it was awarded EUR 300,000 in damages. The Court also ordered the advertising campaign to be stopped.

Tribunal de grande instance de Paris (3e ch., 3e sect.), 30 mars 2004, Luc Besson et SA Gaumont c/ SFR et Publicis Conseil

Regional Court of Paris (3rd chamber, 3rd section), 30 March 2004, Luc Besson and Gaumont S.A. v. SFR and Publicis Conseil

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026