[FR] Plagiarism of the Heroine of the Film "The Fifth Element" Defined as an Original Work in an Advertisement

IRIS 2004-9:1/20

Amélie Blocman
Légipresse

In March 2004 the Regional Court of Paris ordered the telephone operator SFR and the advertising agency Publicis to pay the film company Gaumont EUR 300 000 for parasitic conduct as it had run a large-scale advertising campaign that deliberately used elements that were evocative of the film (see IRIS 2004-5: 7). One month later, the two companies appealed against the judgment, as did Luc Besson, whose application to the Courts on the grounds of piracy infringing his moral right as co-author of the film had been dismissed by the Court.

On 8 September, the Court of Appeal in Paris delivered a much-remarked decision. The advertiser's parasitic activities were confirmed, but the amount of the relevant compensation was substantially increased. What is more, the Court of Appeal, unlike the Court in the initial proceedings, acknowledged that the central character of the film, Leeloo, had been plagiarised, and ordered the advertiser and the agency to pay a record amount of damages to Luc Besson and Gaumont for this.

In examining the film director's application, the Court of Appeal laid down the principle according to which "it is possible for a fictional character, on condition that it constitutes an original work, to be protected and its reproduction without its originator's authorisation, particularly if it is immediately identifiable, to constitute copyright infringement". In the present case, the Court found that Leeloo, the heroine of "The Fifth Element", constituted in herself, by the combination of her characteristic and constant elements throughout the film (costume/hair colour), an original work, and has acquired the status of a truly mythical character. Thus the character selected to illustrate the disputed advertising campaign, who wears a red wig and an outfit that imitates that of the heroine and is played by the same actress as in the film, creates an immediate visual identification between the two characters, giving rise to confusion in the public's mind. The advertiser and the advertising agency cannot justify this and are bound to agree that there is identification with the character in the film, reinforced moreover by the use of scenographic elements (sets) that correspond exactly to that of the cult sequence from the film. The Court held that if the character of Leeloo had been reproduced in the advertisement without authorisation, this constituted copyright infringement. In view of the broad

© European Audiovisual Observatory (Council of Europe) 2026

coverage of the disputed advertising campaign (more than 2 000 TV spots in one month, 18 000 posters, inserts in more than 150 newspapers and magazines, etc), the advertiser and the agency were ordered by the Court to pay, jointly and severally, EUR 750 000 to the production company in compensation for their infringement of its pecuniary rights, and EUR 1 million to Luc Besson in respect of infringement of his moral right as the film's director.

Moreover, the Court recalled that "instigated on the basis of Article 1382 of the Civil Code, proceedings for parasitic conduct could not be brought at the same time as proceedings for copyright infringement unless the applicant invoked and supplied proof of separate facts or the separate existence of copyright infringement". The Court held that the advertising company and the advertising agency, in addition to their copyright infringement, had also deliberately placed themselves in the wake of the film "The Fifth Element", constantly seeking to forge a link between the product being advertised and the cinematographic work. The Court upheld the allegation of parasitic conduct, and re-evaluated the compensation at EUR 1 million more than three times the amount ordered by the Court in the original proceedings.

Cour d'appel de Paris (4 chambre, section A), 8 septembre 2004 - Publicis Conseil et Luc Besson c/ Stés Gaumont et SFR

Court of Appeal of Paris (4th chamber, A section), 8 September 2004 - Publicis Conseil and Luc Besson v. the companies Gaumont and SFR

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026