[FR] Does Finding Nemo Infringe Copyright in a Pre-existing Work?

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Clown fish can sometimes be real sharks! That seems to be the only conclusion to be drawn from the lawsuit brought by the French company publishing an illustrated children's book entitled Pierrot le poisson clown (Pierrot the clown fish) against the companies Walt Disney, Pixar and Disney Hachette Edition. The former, claiming copyright in respect of its book and ownership of the semi-figurative trade name Pierrot le poisson clown, brought its case against the latter under the urgent procedure and then on the merits of the case when the film Finding Nemo came out.

The Regional Court of Paris, deliberating on the merits of the case on 20 April, agreed with the judges who had deliberated on the case as an urgent matter and decided that the applicant company did not have copyright in respect of either the work Pierrot le poisson clown and its cover or the character itself. According to Article L. 113-1 of the French intellectual property code (Code de la propriété intellectuelle - CPI), "The qualification of author, unless proven otherwise, lies with the person(s) under whose name(s) the work is made known". But no proof had been brought in the present case that the co-authors of the work, comprising authors, illustrators and an artistic director formally identified and presented as such in the printed book, had assigned their rights to the applicant publishing company, and consequently it could not claim copyright in respect of the book. The Court applied the same reasoning to the rights claimed by the company in respect of the clown fish.

On the point concerning infringement of copyright concerning the cover as claimed against Nemo's World, the court rejected the company's claim as here again it failed to provide proof that it held the rights of the initial designer of the character.

In answer to the claims based on infringement of copyright in the semi-figurative trade name registered by the company, comprising both the name Pierrot le poisson clown and the figurative representation of the character moving about in its sea environment, the companies Walt Disney and Pixar claimed nullity of the said trade name on the grounds of fraudulent registration, under Article L. 712-6 of the CPI. The Court noted, after careful examination of the chronology of the events and circumstances, that the applicant company had had knowledge of the plans for the film Finding Nemo and its distribution (the trailer, for example, had

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been shown in France as early as September 2002) before the trade name was registered on 18 February 2003 and indeed before the company itself was registered ... Thus it was demonstrated that the applicant company's manager had been able to complete the graphic illustration of Pierrot after he had seen the graphic image of Nemo, as the illustrations produced prior to 2002 were very different from those finally registered for the Pierrot character. The Court, noting furthermore that the applicant company claimed infringement of copyright more than four months before the trade name was registered, found that the registration had been made solely with a view to preventing the companies Disney and Pixar from registering the trade name and commercially exploiting their spin-offs. Malicious intent of this kind constitutes fraudulent action and this affects the validity of the registration of a trade name; the Court therefore declared the registration of Pierrot le poisson clown null.

Tribunal de grande instance de Paris, 3e ch. 1re sect., 20 avril 2005, SARL Flaven Scene c/ Walt Disney Pictures, Société Pixar et autres

Regional Court of Paris, 3rd chamber, 1st section, 20 April 2005, Flaven Scene Sàrl v. Walt Disney Pictures, Société Pixar, et al.

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