[FR] Finding against Pink TV for Infringement of a Registered Brand Name

IRIS 2006-6:1/21

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In a judgment delivered on 27 April, the regional court in Paris declared null the brand names registered by the channel Pink TV and banned it from using its title. The channel, which has been broadcasting by cable and satellite since October 2004, was summoned to appear in court by an audiovisual production company that had registered the brand name “P.I.N.K.” (“Programmes d’Information Non Konformiste”) in December 1999 in order to designate the production and broadcasting of television programmes. The company had used the brand name in producing a programme entitled “P.I.N.K”, with seven broadcasts shown on the France 2 channel from January 2000 onwards. The channel, for its part, had registered seventeen brand names January 2001 and July 2004 based on the word “pink”, including Pink TV.

The court was asked to deal with a case of infringement of a registered brand name and copyright, and it took note that the signs at the root of the dispute had in common the four letters P, I, N and K, presented in the form of an acronym and separated by full stops in the applicant company’s brand name, and presented as one word in the other brand name. The court noted, however, that this minimal visual difference in fact disappeared when the names were used phonetically. Moreover, the dominant feature of the Pink TV brand name was without a doubt constituted by the first word in the phrase, as the letters “TV” were purely descriptive of the products and services under consideration. Indeed the channel was referred to in the press as just “Pink”, as was the applicant’s brand name. As the identity of the products to which the brand names refer was not contested, the court therefore had to reach a decision on the risk of confusion. In doing so, it recalled that such a risk existed where there was imitation of an earlier brand name, and included the risk of association, meaning the risk of consumers being led to believe that the two brand names belonged to the same undertaking. This was indeed the case here; thus if the applicant production company wanted to produce a new broadcast or launch a magazine using its brand name, the ordinary, normally attentive consumer would be led to think that they were by the company Pink TV. The court therefore held that infringement by imitation was established, as well as infringement of the production company’s copyright in respect of the title P.I.N.K. to designate a television broadcast, declared null the brand names registered by the company Pink TV on the basis of Article L. 711-14 of the [French] Intellectual Property Code, and ordered it to pay EUR 20 000 to the applicant company as compensation for the loss of value of its brand name which

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it was now impossible to use because of the intensive use made of it by the company Pink TV. The channel has therefore been banned from using the term “pink” in any form whatsoever, subject to payment of a penalty of EUR 10 000 per day of delay two months after notification of the judgment. It is therefore still too soon to know what the channel will call itself in future.

TGI Paris (3e chambre, 2e section), 27 avril 2005, SARL FOVEA c/ SAS PINK TV

Regional court in Paris (3rd chamber, 2nd section), 27 April 2005, S.A.R.L. Fovea v. S.A.S. Pink TV

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