[NL] Copyright in the Scent of Perfume

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On 16 June 2006, the Dutch Supreme Court rendered its decision in the Lancôme - Kecofa case. Lancôme had sued Kecofa for, amongst others, copyright infringement of its perfume “Trésor”.

With this ruling, the Supreme Court has confirmed the finding of the Court of Appeal of 's-Hertogenbosch issued on 8 June 2004. In its judgment, the Supreme Court acknowledged that the scent of a perfume may qualify for protection under copyright law. However, this does require, as is always the case for protection under copyright law, that the scent be original. It added it is the scent itself which is protected and not the liquid from which it originates. The fact that not all provisions of the Dutch Copyright Act can directly be applied to scents does not hinder the principle that the creator of an original scent may invoke copyright law for protection against imitation. Also, the mere fact that a perfume fits within a certain tradition or style of scents, does not exclude it from copyright protection.

The Supreme Court also confirmed the finding of the Court of Appeal, which was based on a physiochemical report submitted by Lancôme, that Kecofa's perfume “Female Treasure” constitutes a copyright infringement of Lancôme's perfume Trésor. In this physiochemical report, the olfactory components of both perfumes were compared. The report concludes that “Trésor” and “Female Treasure” have 24 olfactory components in common. Taking into account that “Trésor” contains 26 olfactory components, this leads the reporters to believe that the similarity of components is not a coincidence. Moreover, the probability of sharing the same 24 olfactory components can, according to the report, be likened to winning the lottery every day for a century. Kecofa contested the use of the report made by the Court of Appeal before the Supreme Court. The latter, however, found this use to be admissible and held that Kecofa should have contested the admissibility of the report during the proceedings before the Court of Appeal itself.

LJN: AU8940, Hoge Raad , C04/327HR

http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=AU8940

Judgment of the Dutch Supreme Court, 16 June 2006, LJN AU8940, C04/372HR

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http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=AP2368

Judgment of the District Court of 's-Hertogenbosch, 8 June 2004, LJN: AP2368, C0200726/MA

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