[FR] Unremunerated Exploitation of a Television Presenter's Personality Rights

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In a judgment delivered on 28 September, the regional court in Paris ordered the production company of a popular television programme ("C'est mon choix") to pay damages to its presenter, Evelyne Thomas, for having broadcast 62 broadcasts from the previous season over the summer of 2004 without her authorisation. Ms Thomas was an employee of the company until June 2003, when she created a company to "manage, exploit and promote the image, on any media, of Ms Evelyne Thomas". In July 2003 the two companies concluded an agreement under which Ms Thomas's company would be entitled to receive payment from the production company in respect of exploitation of the programme, broadcast daily. In the summer of 2004, Ms Thomas noted that 64 programmes from the previous season had been shown, although she had not given her consent. She therefore held that the production company had used her image, name and voice unlawfully. The company claimed in its defence that she had agreed to such use from the outset of their contractual relations.

The court, however, recalled that "the subject's consent to the broadcasting of his or her image must, in principle, be stipulated specifically or at the very least be unequivocally deducible from the circumstances of the matter". This was not the case here. It was true that the successive employment contracts between the production company and the presenter authorised the employer to make use of her recorded image, voice and name anywhere for an unlimited period of time, in return for payment to her of proportionate remuneration in addition to her salary. The production company was wrong, however, in thinking that it could deduce from the agreement concluded with Ms Thomas's company in July 2003 that it had been tacitly authorised to show repeats of the broadcasts - the agreement did not refer to any conditions for repeat showings of the broadcast.

The court found that the parties had clearly intended to confer a pecuniary value on the image and voice of the applicant party. Unremunerated exploitation of her personality in this way therefore constituted a prejudice, for which compensation could be claimed on the basis of Article 1382 of the Civil Code. In order to evaluate the prejudice suffered, the court referred to the number of repeat showings of the broadcast and to the fact that the earlier contracts made provision for remuneration amounting to 5% of net revenue in favour of the applicant party. As the production company had sold the broadcasts to the France 3 channel for 15,000 euros each, the court awarded the presenter EUR 46,500 in

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damages - substantially less than the EUR 4.65 million claimed!

TGI Paris (3e ch., 2e sect.), 28 septembre 2006, Evelyne Thomas et 2 Secondes production c/ Réservoir Prod

Regional Court of Paris (3rd chamber, 2nd division), 28 September 2006, Evelyne Thomas and 2 Secondes Production v. Réservoir Production

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