[FR] Evaluation of Infringement of Trademark in Respect of a Brand Name Belonging to a Television Channel

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On 30 May 2007, the court of cassation delivered an important decision on trademark law in a dispute between two television companies. The case involved the company Paris Première, which operates a channel of the same name, and since 1995 has owned a semi-figurative brand name consisting of the name "Paris Première" on a rectangular background in a black band beneath an orange-coloured band, used to designate the broadcasting and production of television programmes and the operating of channels or programmes. The company had previously failed, before the court of appeal, in the case it had brought for infringement of trademark in respect of this brand name against the regional terrestrially-broadcast channel France 3 which, for a certain period of time starting in 1998, had used the titles "Bordeaux Première", "Limoges Première", "Basse Normandie Première", etc to designate television programmes. Article L. 713-3 of the Intellectual Property Code, however, prohibits - unless the owner's authorisation has been obtained - the reproduction and use of a brand name for products that are similar to those designated in the registration if this could create the risk of confusion in the minds of members of the public. The court of appeal turned down the appeal lodged by Paris Première, noting that there was little similarity between the logos used and that there was no risk of confusion. The company took the matter to the court of cassation, claiming that the appeal judgment, in appreciating the risk of confusion, did not take into account the celebrity its brand name acquired after 1998, the time when France 3 launched its programmes with the disputed titles. Paris Première holds that in cases of infringement of trademark, a court dealing with a case should deliberate on acts of infringement committed up to the date on which the judge deliberates. As a result, it should therefore evaluate whether the Paris Première brand name had a specific distinctive nature because of the celebrity it had been able to acquire, not only at the time France 3 began to use the logo, but also - if such use continues - up to the date on which the judge deliberates. The court of cassation rejected the application and upheld the appeal decision, considering that "to determine the extent of the *protection of a brand name according to its distinctiveness, the court of appeal had indeed taken into* consideration the perception of the public concerned *at the time the allegedly infringing logo began to be used*". Regarding the global evaluation of the risk of confusion between the logos, the court of cassation also upheld the position adopted by the court of appeal, holding that a

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normally attentive viewer would not be led to think that the regional news programmes broadcast by the defendant party, the company France 3, could come from Paris Première. There was therefore no risk of confusion in the mind of the viewer and the court of appeal had been correct in refusing the claim of infringement of trademark in respect of the brand name.

Cour de cassation (ch. com.), 30 mai 2007, Société Paris Première c/ Société France 3

Court of cassation (commercial chamber), 30 May 2007; the company Paris Première v. the company France 3

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