[FR] Hidden Cameras - when the Need to Inform the Public Takes Precedence over an Individual's Rights in Respect of the Use of his Image

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Amélie Blocman
Légipresse

Can a person filmed using a concealed camera in a television report claim compensation for the prejudice he feels he has suffered because of the infringement of his rights in respect of the use made of his image? That was the question facing the press section of the regional court of Paris.

In the case at issue, the spokesperson of a distributor of medicines that was the subject of a documentary on sales of medicines on the Internet, broadcast on France 5, was suing the television channel and the production companies for having infringed his rights in respect of the use made of his image. More specifically, when the person concerned was answering questions initially in front of the camera he knew he was being filmed, whereas thereafter he was filmed without knowing it.

The court recalled the principle that it was the person claiming that the authorisation that had been given had been exceeded who was required to demonstrate that the use made of his image was not what had been authorised. It was noted that the applicant, when he knew he was being filmed, had authorised the use of his image in the disputed documentary. Concerning the recording filmed without his knowing using a concealed camera, the court held that the defendants were right in claiming that, in this case, the need to inform the public was more important than the person's right to have control over the use made of his image. Thus in the three disputed sequences the court found that there was no disproportionate infringement of the applicant's rights in respect of the use made of his image by broadcasting it without his agreement or despite his refusal. The images had been filmed and broadcast under conditions that were very similar to those under which he had agreed to be filmed a few seconds earlier. The composition, attitudes and situations were the same in both cases, and the applicant was not shown without his knowing it in a situation which infringed his dignity in any way whatsoever. The topics discussed were the same as those to which he had just given his authorisation. At the time he refused to allow the presence of the camera, however, what the person concerned said deserved to be made known to the public: for example, although he had replied on-camera that he did not know whether the company was about to open in the Czech Republic, he gave an answer when he thought he was off-camera; similarly, after a long

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explanation on-camera on the traceability of the origin of the medicines distributed by his company, he then said that medicines produced in other countries were also guaranteed by the manufacturers and that the system for checking pharmacies was ineffective.

The producers of a television work in which the image was inseparable from the spoken word could therefore, so as not to weaken the impact of the words, prefer to show viewers the words being spoken for their full information. The court held that the nature of the words spoken was thus much more important than the image of the person speaking them. The need to inform the public should therefore take precedence over the applicant's rights in respect of the use made of his image, and the court therefore dismissed his applications.

Tgi de Paris (17e ch. civ.), 7 septembre 2009 - R. Berghausen c. SA France Télévisions et autres

Regional court of Paris (17 th civil chamber), 7 September 2009 - R. Berghausen vs. France Télévisions S.A. et al.

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