[FR] Wrongful Imitation of a Reality TV Programme

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The commercial court in Paris has delivered an important judgment in a dispute between the famous production company Endemol, the exclusive international distributor for the format of the "Big Brother" broadcast and its various adaptations (in France, the programmes "Loft-Story" and "Secret Story"), and the company ALJ Productions, founded by a former Endemol employee. Endemol claimed that "Dilemme", produced by ALJ and broadcast on the W9 DTV channel, used the features characteristic of its own formats and programmes, and that its broadcasting constituted unfair parasitic competition. The court found that comparative analysis of the broadcasts showed that the company ALJ Productions had taken up the totally new essential characteristics of the Endemol programmes (the continuity script of the kick-off, the continuity script of the weekly and daily broadcasts, the home bases of the competitors and their contents, the typology of the competitors, the mechanics of the broadcasts, and many details of the everyday lives of the competitors). The fundamental elements that had been used included the applicant company's "confinement" format, the characteristic features of the places of "confinement", the mechanics of the programmes, the characteristic elements of the casting of the competitors who had been pre-selected on the basis of their physical or psychological profile (the tattooed muscle-man, the buxom blonde, etc), the characteristic elements of broadcasting the programmes, and a number of technical characteristics (same channels, same frequency and duration of broadcasting and repeat showing of the programmes). Using the essential features of Endemol's audiovisual formats and programmes had necessarily created a degree of confusion in the minds of the public as the concept of the broadcasts at issue was identical, directed at the same audience, and with a form and content displaying broad similarities and insignificant variations that made it difficult to distinguish clearly between the programmes at issue. The court found that this wrongful imitation constituted unfair competition. However, since the applicant party had not provided proof of the specific investment it had made in its key reality TV programmes, whereas the defendant parties had demonstrated the material and human investment it had put into developing the disputed programme, the court found that it had not acted in a parasitic fashion. According to the court, unfair competition necessarily resulted in a commercial change that constituted prejudice, if only of a moral nature. This moral prejudice, involving the confusion arising in the public's mind as to the origin of the programmes at issue, was valued at EUR 900,000, an amount equivalent to Endemol's loss of opportunity to conclude a partnership with W9,

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which had wanted to acquire a reality TV programme similar to the company's formats and programmes. The court also banned exploitation of the programme at issue on any medium, on pain of a fine. The case is not closed yet, as ALJ Productions has appealed against the judgment.

Tribunal de commerce de Paris (15e ch.), 11 mars 2011 - Endemol Productions c. ALJ Productions et a. (décision non définitive)

Commercial court of Paris (15th chamber), 11 March 2011 - Endemol Productions v ALJ Productions et al. (judgment not final)

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