[IT] The Court of Rome Protects the TV Show “Ballando con le Stelle” and Blocks “Baila!”

IRIS 2011-10:1/27

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On 23 September 2011, the Court of Rome decided to uphold a complaint made by RAI, Milly Carlucci (TV presenter of the show “Ballando con le Stelle”) and Bailandi Entertainment s.p.a. against RTI and Endemol (Mediaset group) for infringement of broadcasting rights in RAI's TV show “Ballando con le stelle” by Mediaset's show “Baila!”.

Milly Carlucci and the other co-authors of the show “Ballando con le Stelle” initiated a complaints procedure in order to protect their copyright in the show. In the second phase RAI also intervened in the complaint, arguing the infringement of competition law as well. Bailandi Entertainment s.p.a. (which has licensed the BBC's format of the show “Strictly Come Dancing”) intervened asking for the protection of the format of the show and for an order of removal of the show “Baila!”, as it is a copy of “Ballando con le Stelle”.

Mediaset states that it has bought the rights over the format from the South American show “Bailando por un sueno”, which they claim is a differentiated, unique and original show, from Endemol.

In its decision the court of Rome states that both shows fall into the talent show category, more precisely into that of dance competitions featuring a combination of dancers and so-called VIPs (very important persons).

The decision of Judge Muscolo specifies that, according to the jurisprudence, a television show will qualify as an intellectual work protected by copyright (l.n. 633/41), as long as it exhibits creativity (even if in a modest way). It excludes works that are evidently banal.

Furthermore, the court stresses that the comparison between the two shows, which is necessary in order to check whether copying has taken place or not, has to be done in an immediate way. It has to use parameters such as the ordinary consumer and, in this case in relation to the television work, the ordinary viewer.

Having said that, the judge underlined that the show “Ballando con le Stelle” is characterised by a sufficient level of creativity to differentiate it from other dance competitions in many respects. Those characteristic elements are also present in the competing show “Baila!”. This show has a few differentiated elements, but

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those elements are marginal and not enough to give the television work a sufficient level of creativity. So according to the immediate impression and perception of an ordinary viewer of the two shows, it appears that one show is reproducing the other.

The judge concludes that there has been copying of “Ballando con le Stelle” and prohibits Mediaset from broadcasting “Baila!” or any show, even with another name, that has the same characteristics of the show “Ballando con le Stelle”.

An infringement of intellectual propriety rights was found to have taken place and so the *fumus boni iuris* (presumption of appropriate legal basis) of the claim and the demand for the removal of “Baila!” are accepted.

The decision states that for the purposes of this prohibition imposed on Mediaset, the question of the protection of the format is absorbed into the ascertainment of the protection of the show. In addition, the decision concludes that there was no infringement of competition rules.

The decision will probably soon be appealed by Mediaset, as on 26 September 2011 the first show of “Baila!” was already broadcast.

Tribunal di Roma sentenza Baila! del 23 Settembre 2011

http://www.expoitalyonline.it/wp-content/uploads/ordinanza_baila.pdf

Court of Rome, decision Baila! of 23 Septembre 2011

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