[FR] Protection of Reality TV Programme Formats Limited by Rules on Unfair Competition

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In a decision handed down on 12 September 2012, the court of appeal in Paris overturned the judgment that had found ALJ Productions, a production company owned by Alexia Laroche Joubert, guilty of unfair competition in respect of her previous employer, Endemol. Endemol is the exclusive international distributor of the Big Brother reality TV programme format, and in France it operates the programmes Loft Story and Secret Story. It felt that the programme Dilemme, produced by ALJ Productions and broadcast between May and July 2010 on the W9 channel, made deliberate use of the essential characteristics, both technical and aesthetic, of its own formats and programmes, thereby creating confusion in the public's mind.

Contrary to the commercial court, which had found in favour of the claims brought by Endemol and deemed unfair competition proven (see IRIS 2011-5/21), the court of appeal stated that "barring direct disregard for the principle of the freedom of commerce and industry and the resulting rule of free competition, the mere fact of copying the service provided by another party in no way constitutes an offence if these are usual elements common to an entire profession or to an entire specific sector of activity and for which [as in the case at issue] intellectual property rights are not justified". After a detailed analysis of the elements of the "confinement formats", "places of confinement", the features of the broadcasting of the programmes (channels, frequency, duration of broadcasting and repeat broadcasting), selection method for candidates, who were pre-selected for their physical or psychological profile (the tattooed muscle-man, the buxom blonde, etc), which Endemol claimed had been reused, and of the technical and aesthetic elements of the broadcasts at issue, the court of appeal concluded that the similarities noted were intrinsically linked to the confinement reality TV genre and merely referred to the usual codes for this type of broadcast, without creating any kind of identification with the formats claimed by Endemol, and without incurring any risk of confusion for the viewer as to the origin of the format.

The court of appeal rejected the allegations of parasitism, as indeed the commercial court had done, since the elements allegedly reused, which were inherent in the reality TV genre, could not be considered as constituting an individualised economic value likely to procure a competitive advantage for a party using them as inspiration. By rejecting all the applications brought by Endemol, the court of appeal lifted the order of the commercial court banning ALJ

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Productions from broadcasting the Dilemme programme, and ordered Endemol to refund the EUR 900,000 damages the production company had been ordered to pay under the provisional enforcement of the initial court's judgment. Endemol has announced that it has appealed to the court of cassation against this latest judgment.

Cour d'appel de Paris (pôle 5, chambre 4), 12 septembre 2012 - ALJ Productions c. Endemol Productions

Court of appeal of Paris (section 5, chamber 4), 12 September 2012 - ALJ Productions v. Endemol Productions

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