[FR] Facebook Obliged to Re-Open Page Belonging to TV Series Fan

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On 28 November 2013 the regional court in Paris delivered a noted judgment, ordering Facebook to re-open an “unofficial” fan page for the TV series Plus Belle la Vie (“PBLV”), blocked by the delegated producer in 2012. There have been more than two thousand episodes of this series (a record on French television), broadcast every evening on France 3 since 2004, attracting large audiences both on TV and on social networks. The creator and administrator of the “pblvmarseille” Internet site, an unofficial site devoted to the series, launched the “PBLV Marseille” page on Facebook in 2008. In 2012, she discovered that the producer of the series and holder of the brand names “Plus Belle la Vie” and “PBLV”, with whom she maintained regular relations, had asked Facebook, which had agreed, to merge her unofficial page (which had 605 200 fans at the time) with the official page of the production company. She felt that the production company had appropriated the fans of her page without notifying her, and had the company and Facebook France summoned to appear in court so that she could obtain a court order to have her page reinstated and the prejudice she had suffered made good. The production company argued that the unofficial page was likely to create confusion in the public’s mind and that its creator was guilty of free-riding, and claimed EUR 8,000 in compensation.

The judges began by recalling that, under Article L. 713-2 of the Intellectual Property Code and Article 5 of Directive 2008/95/EC to approximate the laws of the member states relating to trade marks, “the owner of a trade mark is entitled to bar any third party, in the absence of consent being given, from using for business purposes a sign identical to the trade mark for products or services identical to those for which it is registered”. They went on to note that it was not proven that the disputed page had been created for commercial purposes with the aim of distributing goods or services on the market. The presence of the logo and name of the series on the page was also deemed insufficient proof of a commercial purpose, as was the organisation of competitions and games by the site’s creator, since it was not proven that a charge was made for participation or that she had gained any economic advantage. Even though the disputed Facebook page had a very large number of fans, it was not possibly to state categorically that the production company’s trade marks were used on the page for “business purposes”. In the absence of proof that the creator and administrator of the unofficial “PBLV Marseille” Facebook page had used the trade

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marks for business purposes or had gained any direct or indirect advantage from their use, the court found that the production company that owned the trade marks of the series could not prevent their use. Furthermore, the blocking by the company Facebook France of access to the disputed page, undertaken in application of the Act of 21 June 2004 on confidence in the digital economy, was not held to be at fault. The request on the part of the company that owned the trade marks may have appeared justified to the company Facebook France, which was required to intervene rapidly. Since it was not in fact justified, the court ordered Facebook to reinstate the “PBLV Marseille” page as it existed before it was closed down, and imposed a fine of EUR 500 for each day of delay.

Furthermore, noting firstly that the production company was aware of the existence of the Facebook page at issue, as it had approached its creator and thanked her for her support, and secondly how many fans the page had, which was a gauge of the human investment involved, the court found the production company’s initiative, resulting in the closure of the page, unfair. It awarded the page’s creator and administrator EUR 10,000 for the resulting moral prejudice caused. No doubt the many fans of the television series present on social networks will welcome this decision.

Tgi de Paris (3e ch. 4e sect.), 28 novembre 2013 - Laurence C. c. Telfrance Série et Facebook France

Regional court of Paris (3rd chamber, 4th section), 28 November 2013 - Laurence C. v. Telfrance Série and Facebook France

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