[FR] Court of Cassation Confirms Production of Dilemme Reality TV Programme Does Not Constitute Unfair or Parasitic Competition in Respect of Endemol

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On 26 November 2013, the Court of Cassation put an end to the proceedings between the production company Endemol, the "inventor" of the audiovisual format of locked-in reality TV, and the company run by its former employee, ALJ Production, which launched the Dilemme programme. Endemol claimed that the programme, broadcast from May to July 2010 on the channel W9, adopted the essential features, both technical and aesthetic, of its own audiovisual formats and programmes, thereby creating confusion in the public's mind. The company instigated proceedings against its competitor on the grounds of unfair and parasitic competition. In its decision on 12 September 2012, the court of appeal had overturned the judgment against ALJ Productions for unfair competition (see IRIS 2012-9/20). Endemol thereupon appealed to the Court of Cassation.

The Court of Cassation recalled that the court of appeal had received an application for the awarding of compensation on the two-fold grounds of unfair competition resulting from the adoption of the essential elements of formats of programmes produced by the company Endemol, and parasitic acts. It found that the court of appeal had not neglected to observe the requirements of Article 1382 of the Civil Code as it had considered whether there was a risk of confusion between the broadcasts at issue. Secondly, the Court of Cassation found that the court of appeal had exercised its sovereign power of appreciation of the evidence submitted to it, and that it was not obliged to concur with the parties in the details of their arguments. Thus it had judged that neither Alexia Laroche-Joubert, a former employee of Endemol and head of the defendant production company, nor her former employees or service providers, nor the company itself, which had done no more than make use of the skills and personal experience of its founder, were guilty of unfair competition. The court of appeal also found that the similarities noted between the formats were intrinsically linked to the locked-in reality TV genre, and corresponded to the usual codes of the profession in this field, such that the alleged elements did not make it possible to identify the formats as Endemol claimed, which would create confusion, or to establish the unlawful diversion of skills. The Court of Cassation went on to note that various elements established an overall impression that was specific to the Dilemme programme, and that ALJ Productions had produced evidence of justification of the expense and intellectual effort it had put into producing the programme; indeed the company had registered six formats with SCAM (Société Civile des

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Auteurs Multimédias). The court of appeal had found that this showed that the company had not placed itself in Endemol's wake and obtained undue advantage from either its notoriety or its investments. Its decision was thus justified at law, and the appeal was therefore rejected. The Court of Cassation thus confirmed definitively that the production of the reality TV format Dilemme did not constitute an act of unfair or parasitic competition with regard to Endemol.

Cour de cassation (ch. com.), 26 novembre 2013 - Endemol Production

http://legimobile.fr/fr/jp/j/c/civ/com/2013/11/26/12-27087/

Court of Cassation (commercial chamber), 26 November 2013 - Endemol Production

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