[FR] Originality of television broadcast format

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Decisions on copyright protection for the format of a television programme are sufficiently rare so as to warrant reporting the recent decision handed down by the regional court (tribunal de grande instance - TGI) of Paris.

In the case at issue, the business manager of an audiovisual production company described himself as the creator of the 'Teum-Teum' audiovisual concept. This consists of filming, in a flat located in "sensitive" area, a magazine programme during which a presenter hosts a guest celebrity from the world of culture, show business, or politics for a discussion on their respective environments, current affairs, and everyday life in urban housing estates. Having produced the initial format for the broadcast in 2004, the applicant, the producer, had presented a pilot programme in 2005 to a number of media professionals who had been approached about the programme. The concept aroused interest at France 5 and in 2007 the applicant agreed to develop a new format for the 'Teum-Teum' programme with an executive co-producer (the defendant company), which became "a magazine for self-discovery through the eyes of other people". For this purpose, they signed an agreement to transfer to the defendant company all the rights for audiovisual adaptation and use involving the audiovisual concept of 'Teum-Teum', and an agreement with a view to co-producing a pilot broadcast. The executive producer also proposed that, should plans be made to produce a programme based on the format, the applicant company should co-produce the programme. The magazine programme developed within this contractual framework had been broadcast on a monthly basis and repeated on France 5 from 2009 to 2011. The broadcast had not been renewed thereafter and the executive producer had, for its part, developed and produced another programme, entitled 'Les uns, les autres'. The applicant company claimed that this new magazine used every aspect of the format of the 'Teum-Teum' programme, with the same presenter, narrative structure and teams, and that its partner, which had not consulted it, had violated the co-production contract. In view of this, the applicant company had the respondent company summoned to appear in court.

The Court analysed the evolutions in the format used for the programme and decided that it was the result of joint work carried out by its creator, the applicant, who had had the idea for a broadcast based on a celebrity's discovery of various aspects of an environment he or she was not familiar with, and the defendant executive producer, who had applied to these aims of encounter and

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cultural information a broader concept of the discovery of a neighbourhood and the people in it. The judge concluded that the final version of the format and the characteristics invoked, namely the establishment of inter-generational gateways and the demonstration of a “collision of universes”, with a celebrity guest meeting stakeholders in the local urban culture, subsisted in the programme produced and should be appreciated in combination. In the light of the intellectual work undertaken to reach the format used and the aims pursued, this appeared to constitute the programme’s originality.

The Court continued to analyse the failure to perform the contract invoked by the applicant company, referring to the production of the programme ‘Les uns, les autres’. It set aside the alleged elements of similarity, finding that they were not elements that characterised the ‘Teum-Teum’ format specifically; the Court recalled that it was the formats of the programmes that needed to be compared, not their content in terms of information and intellectual action. Thus the legal arguments based on comparison of the subject matter treated by ‘Teum-Teum’ and ‘Les uns, les autres’ were irrelevant. Similarly, the Court found that the other areas of similarity noted in terms of “using the same approach”, such as the principle of a road movie, the definition of a single topic for each broadcast, the duration of the programme, the successive interviews, and the presenter’s empathy, were in fact common to all cultural and society magazines.

The programme ‘Les uns, les autres’ could therefore not be considered to be based on the format appended to the 2008 contract between the parties. The Court found that the applicant company was not justified in claiming, on the basis of this contract, that the defendant party had refrained from proposing a co-production of the new broadcast after the ‘Teum-Teum’ magazine had been stopped. The unsuccessful applicant has appealed against the judgement.

Tribunal de grande instance, Paris, (3e ch. sect.3), 12 février 2016, Cool Up's productions et a. c/ Teleparis et a.

Regional court (TGI) of Paris (3rd chamber, section 3), 12 February 2016, Cool Up's Productions and others v. Téléparis and others.

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