[FR] Infringement of protection of image suffered by a doctor, filmed without his authorisation by concealed camera without his anonymity being preserved

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On 2 June 2016, the Court of Appeal in Versailles delivered a new decision on the use of concealed cameras. In the case at issue, a doctor - informed by friends and family that he had been filmed in his surgery without his knowledge for the purposes of a television magazine programme entitled “Régimes: la vérité sur les nouvelles méthodes pour maigrir” (“Diets - the truth about the new slimming methods”) which was to be broadcast a few days later - immediately had the channel and the company editing its Internet site summoned to court to obtain a ban on broadcasting the sound recordings obtained without his knowledge, an order that his voice should be modified and the images blurred, and an award of damages. The judge in the urgent proceedings ordered the defendant companies to modify the voice and blur all the images which had been obtained without the doctor’s knowledge and used in the disputed trailer, whether it was broadcast on television or posted on the Internet site, and to pay EUR 7,000 in compensation for the prejudice suffered as a result of their use of his image in this way. The companies appealed against the order delivered under the urgent procedure, claiming the nullity of the summons, which they considered constituted defamation: the image of the doctor was associated with a commentary preceding the disputed sequence which discredited him by using the extremely pejorative term of "charlatan". However, the Court of Appeal found that the broadcasting of images of the applicant which had been obtained irregularly did not constitute an element of defamation or a means used to effect defamation, but merely used the image, in the context of a television broadcast, to illustrate a spoken commentary which preceded the broadcasting of images: the commentary referred to the administration to patients of allegedly dangerous products. The court therefore found that the judge in the initial proceedings had been right in deciding that the aim of the applications had not been to penalise the defamatory statements but to obtain a ban on broadcasting images and sounds obtained in violation of the doctor’s entitlement to prevent his image being used. The court found that the proceedings were covered not by the provisions of the Act of 29 July but by those of Article 9 of the Civil Code, and consequently rejected the application for the summons to be cancelled.

In respect of the applications brought by the doctor, the court adopted the reasoning followed by the judge in the urgent proceedings, who - the court felt - had rightly concluded that the fact that the reason why the person concerned,

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whose images had been captured without his authorisation, could be identified on the trailer for the broadcast, and that he had indeed been identified by a number of patients and friends, was that he had not been rendered sufficiently anonymous. Moreover, the images had been broadcast in a somewhat unflattering fashion, such that with all the circumstances taken together there was no doubt that a manifestly unlawful interference had occurred. The claimed infringement of the journalists' right to inform and the general public's right to be informed on a subject of general interest resulting from the measures called for and agreed to by the court in the initial proceedings did not appear to be disproportionate to the infringement of the applicant's right to protect his image, which had involved his being filmed without his authorisation using a concealed camera, and without his anonymity being preserved. The order was therefore upheld.

Cour d'appel de Versailles (14e ch.), 2 juin 2016, SA Métropole Télévision c/ C. Bensoussan

Court of appeal in Versailles (14th chamber), 2 June 2016, Métropole Télévision S.A. v. C. Bensoussan

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