[NL] Court finds “ironic” news website can rely upon the quotation exception to copyright

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On 12 May 2017, the District Court of Amsterdam ruled that not only serious media, but also media of an ironic nature can rely upon the quotation exception to copyright. The case concerned a Dutch news website, 925.nl, which publishes ironic articles. In one of these articles, the website discussed the takeover of Sapph Intimates B.V., a lingerie webshop that went bankrupt in 2011 and that used the claimant’s photograph of the former Olympic swimmer Inge de Bruijn in swimwear on their poster. The poster with the claimant’s photograph was therefore also shown in the ironic article by the news website. The article stated that Roland Kahn, also owner of America Today clothing, bought Sapph out of “pure sleaziness”, calling it “not the best move businesswise”.

The photographer claimed that his copyright had been infringed, as no permission had been asked for the use of his photograph by the news website. As a defence, the news website claimed that this lack of permission was justified under the quotation exception under section 15a of the Dutch Copyright Act (see IRIS 2010-1: Extra).

In its judgment, the Court assessed whether all the requirements for the quotation exception had been fulfilled. Regarding the requirement of lawful disclosure of the work quoted from, the Court ruled that the photograph had been lawfully disclosed as part of the poster in an advertising campaign. As the company was known for its controversial posters, the Court found it logical that the poster formed part of the article discussing this company. It stated that the poster did not form a predominant part of the article and that the meaning of the article would not have changed if another poster had been shown; therefore, the photograph was not individually exploited by the news website. The quote was thus in accordance with what is generally regarded as reasonably acceptable and the number and size of the quoted parts were justified by the purpose. While the news website had not clearly indicated the name of the author of the photograph, the company that had originally published the poster with the photograph had also failed to do so; therefore, the website could not be reproached for the lack of indication of the source. The last two requirements of source indication and observation of moral rights were thus fulfilled as well.

The Court rejected the claimant’s argument that the medium quoting a copyright protected work has to be of a serious nature; a news website can also rely on this

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exception when it is of an ironic nature. The serious character of a medium can therefore not form an extra requirement, nor should a medium of an ironic nature be subject to stricter requirements than for serious media. However, the Court recognised that the character of the medium can have an influence on the question of whether the second quotation requirement, to be generally regarded as acceptable, is fulfilled.

Rechtbank Amsterdam, 12 mei 2017, ECLI:NL:RBAMS:2017:3442

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2017:3442

District Court of Amsterdam, 12 May 2017, ECLI:NL:RBAMS:2017:3442

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