[FR] No fault in an advertising film drawing inspiration from a short film

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The famous French film director Claude Lelouch and his company brought court proceedings against Peugeot-Citroën and the company which produced an advertising film intended to promote the Citroën DS5 in China. It was claimed that the latter had engaged in “free-riding” and unfair competition by using the characteristic elements of one of his short films and to have made it known by posting the “making-of” of the advertising film at issue on the Internet. The short film at issue, entitled C’était un rendez-vous and filmed in 1976, shows a man driving a car fast across Paris, ending with his meeting a woman on the steps leading up to the Sacré Cœur Basilica. The advertising film shows an elegant man crossing Paris at the wheel of his car, ending with his meeting a young woman in Montmartre. The defendants contested the claims on the grounds that the applicants provided no proof that the short film was well-known and no proof of the investment made in its creation and promotion, whereas the defendant company had devoted substantial investment to the film. The defendant company added that the elements common to both films (title and theme) were not appropriable, and that there were significant differences between the two films. Lastly, the company held that it could not be faulted for having merely drawn inspiration from Claude Lelouch’s short film.

The commercial court rejected the claim brought by the applicants, who then appealed. In its judgment delivered on 12 September 2017, the court of appeal recalled that the law penalised both unfair competition - defined as wrongful behaviour including acts intended to create a risk of confusion in the minds of customers as to the origin of a product - and “free-riding” - defined as wrongful behaviour involving positioning oneself in another person’s wake with the intention of taking advantage of that person’s efforts, investments and skill at no expense. In the present case, it is the advertising film posted on the Internet was accompanied by “bonus extras”, such as an interview with the CEO of the film’s production company in which she said that - like Claude Lelouch’s famous scenario for his short film C’était un rendez-vous, the film ended in Montmartre. Even so, the court noted very many differences between the two films: their structure; their soundtrack; the single-sequence shot that comprised the short film (whereas the advertising film is comprised of several cuts); the fact that the advertisement promotes the vehicle as the subject of the film, whereas the short film only shows the car in the final scene; the fact that the characters in the

advertisement appear a number of times during the film, whereas they are only shown right at the end of the short film; etc. Moreover, little investment had been necessary to make the short film, as the director himself attested. The court also noted that, unlike Claude Lelouch himself, the short film was not particularly well-known by the general public, contrary to the claim made by the applicant.

Lastly, the court reiterated, as had been rightly found in the initial proceedings, that the fact that the disputed film was inspired by the short film could not be deemed a fault. The fact of drawing inspiration from a pre-existing work did not in itself constitute a fault. In the present case, the inspiration was limited to a theme or idea that was not appropriable - in the present case, a man driving a luxury vehicle fast through Paris and meeting a woman in Montmartre - and the use of the word “rendez-vous” in the title, for which the applicants could hardly claim to have a monopoly, and the fact that there were considerable differences between the two films. In the light of these differences, the risk of confusion or assimilation by the audience concerned - that is to say the mainly Chinese clientele at which the advertisement was directed - was not proven. There was no proof of any acts that constituted unfair competition or “free-riding”; the original judgment was therefore upheld.