[GB] Copyright protection extends to TV formats under English law

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On 19 October 2017, in Banner Universal Motion Pictures Ltd v. Endemol Shine Group Ltd & Anor, the High Court in London held that TV formats can be eligible for copyright protection as dramatic works under English law. The case related to a television game show format which is called Minute Winner, in which randomly selected members of the public could win a prize after successfully completing a minute-long challenge. It was devised in 2003 by Mr Derek Banner, a Danish citizen, and could be broadcast either singly as a one-minute fill between other programmes, or in a programme break, or as a feature-length, 30-minute show involving several games. The action was pursued by an English company, Banner Universal Motion Pictures Ltd (BUMP), in its capacity as an assignee of the rights in relation to the Minute Winner format, against Endemol Shine Group, the Swedish television production company Friday TV and NBC Universal Global Networks UK. The claimant submitted that the document in which the Minute Winner format was contained (the Minute Winner Document) was a "dramatic work" in which UK copyright subsisted and that, following a 2005 meeting in Stockholm at which confidential information was disclosed, the defendants misused such information in the United Kingdom and elsewhere to develop a game show format called Minute to Win It, which was allegedly derived in substantial part from the Minute Winner format. Rights to exploit Minute to Win It game shows were sold by the defendants in over 70 countries worldwide. BUMP's claim was for copyright infringement, breach of confidence and passing off.

The High Court held that what is usually referred to as the format of a television game show or quiz show can be the subject of copyright protection as a dramatic work, even if it contains elements of spontaneity and events that change from episode to episode. In light of what the authorities reviewed, the High Court judge, Snowden J., stated that copyright protection will subsist in a television format if, as a minimum, "there are a number of clearly identified features which, taken together, distinguish the show in question from others of a similar type; and that those distinguishing features are connected with each other in a coherent framework which can be repeatedly applied so as to enable the show to be reproduced in recognisable form." However, BUMP's claims that the contents of the Minute Winner Document qualified for copyright protection were rejected. In the judge's view, its contents were "very unclear and lacking in specifics." Even taken together, they failed to amount to "a coherent framework or structure

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which could be relied upon to reproduce a distinctive game show in recognisable form." The features identified were "commonplace" and could not be distinguished from the features of many other game shows.

The High Court dismissed BUMP's claim for breach of confidence on the basis that a Swedish court had already delivered a final judgment on the merits of substantially similar claims in that jurisdiction. Snowden J. ruled, in particular, that BUMP was barred by cause of action of estoppel from pursuing a claim on the same facts for breach of confidence in England. Nevertheless, he would have been inclined to accept that the information in the Minute Winner Document was "too vague" and not sufficiently worked-up to have the "necessary quality of confidence about it," and thus amount to protectable information under English law. Finally, the High Court also rejected the claim for passing off on the grounds that Mr Banner had failed to establish the existence of goodwill in the Minute Winner name or format in England, which is a fundamental tenet of the classic trinity of the doctrine of passing off, that is to say, goodwill, misrepresentation and damage. As Snowden J. remarked, no customers ever acquired rights to the Minute Winner format and no shows were ever created to the format set out in the Minute Winner Document. This is an important judgment which provides helpful guidance as to the circumstances under which television formats can attract copyright protection. It also confirms that it is critical for potential rightsholders to draft and maintain sufficiently detailed records and specifications, setting out the format of creative works which can prove commercially valuable.

Banner Universal Motion Pictures Ltd v Endemol Shine Group Ltd & Anor [2017] EWHC 2600 (Ch), 19 October 2017

http://www.bailii.org/ew/cases/EWHC/Ch/2017/2600.html

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