[FR] Le Zapping/Vu: Canal Plus claims of “parasitism” by France Télévisions are dismissed

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Canal Plus, which began broadcasting the programme “Le Zapping” in 1989, announced on 27 June 2016 that it would be pulling the plug on the programme after a total of 27 years on the air. Seven months later, France Télévisions launched “Vu”, a programme based on a series of very short clips from French television programmes. The programme was co-produced by the former producer of the Canal Plus programme, who had worked on “Le Zapping” from day one and had been dismissed by the pay-TV channel a few months before the programme was taken off the air. After writing to France Télévisions, warning it not to copy the characteristics of “Le Zapping”, Canal Plus sued the public audiovisual group for parasitism and demanded EUR 42 million in compensation for financial, reputational and non-material damage.

Canal Plus accused the makers of the “Vu” programme of following in the footsteps of its former programme by using exactly the same concept, structure, spirit and format. It also accused them of asking its former director, whose name was deliberately shown, to produce the programme. Referring to the freedom of creation and the freedom to conduct a business, the public broadcasting group denied following in the footsteps of Canal Plus and engaging in unfair practices, and pointed out that the similarities were attributable to the fact that the two programmes were of the same genre. It claimed that “Le Zapping”-type programmes were television’s equivalent of press reviews in the printed press.

The commercial court pointed out that the term “parasitism” comprises all the ways in which one economic operator can interfere in the wake of another in order to benefit from its work and know-how at no cost to itself.

Having initially warned France Télévisions in writing not to copy the four “principal characteristics” of its programme “Le Zapping”, Canal Plus, in its complaint to the court, only referred to the programme’s 5-6 minute format, which was similar to that of its own former programme, and the fact that the programme’s logo also comprised white letters on a black background.

The court ruled that “Le Zapping”-type programmes were now part of a sufficiently established genre and that similarities between different programmes – especially with regard to their structure, spirit and format – were inevitable.

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Moreover, there were numerous differences between the two programmes at issue, such as their titles, the placement of their respective logos, the interlude between sequences, and the sound and visual presentation.

At the very least, the court ruled, it had not been proved that the characteristics of the Canal Plus programme had been copied. In particular, neither the length of the daily episode of “Vu”, nor the presence of a logo comprising white letters on a black background could give credence to the accusation of parasitism. Finally, Canal Plus had not shown that these aspects were the result of specific investments on its part, from which France Télévisions had sought to benefit at no cost to itself.

Lastly, the court ruled that there was no reason why France Télévisions should not have asked a team of experienced professionals who were available on the job market to produce a “Le Zapping”-type programme. Case law recognises that everyone is entitled to use the skills and professional experience they have acquired in previous jobs. In this case, the programme’s producer and his former colleagues had been free of any obligation or non-competition clause vis-à-vis Canal Plus, and the channel had failed to prove that France Télévisions had tried to recruit the producer prior to his dismissal by Canal Plus.

Since France Télévisions was not guilty of parasitism, the Canal Plus application was dismissed.

Trib. Com. Paris, 21 octobre 2019, n° 2017004105, Groupe Canal + c/ France Télévisions

Paris Commercial Court, 21 October 2019, case no. 2017004105, Groupe Canal + v France Télévisions

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