Kluwer Copyright Blog

Supreme Court, 22.06.2010, IV CSK 459/09 – Subject matter of copyright

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What is and what is not a copyright work is a question even copyright lawyers find difficult to answer when confronted with subject matter on the verge of the required standard of originality. Polish copyright law has quite a long tradition of setting the threshold rather low, which may encourage frivolous lawsuits forcing courts to ponder whether simple graphic designs, short lines of text or even names should or should not be protected by copyright law. Protection by copyright law has an obvious advantage for plaintiffs since in Poland liability for copyright infringements is rather far-reaching. Not only is it strict as far as cessation of infringement is concerned, but also damages in the amount of double license fees are available even in the case of innocent infringements (when fault is proven, triple damages can be claimed). For these reasons each decision of the Supreme Court concerning the necessary conditions copyright works must meet is important. The decision from June 22, 2010 in the "Jogi" case is therefore worthy of attention.

In this case the plaintiff considered the word trademark "Jogi" (used for yoghurts) as a copyright work and argued specifically that the element of creativity could manifest itself not only in the originality of the word itself, but also in the idea of using the created word to designate a certain category of products. The lower instance courts disagreed and the Supreme Court reaffirmed their assessment of the claim. By doing so, the Supreme Court made reference to a couple of significant issues of copyright law that certainly have a more general meaning. Before briefly reporting what the court said, I think it is useful to observe that the "Jogi decision" was at the beginning widely misinterpreted, the reason being that before detailed grounds of the judgment were published, the so called thesis (i.e. a very short, one-sentence, summary) had been revealed and it said that a word trademark consisting of one word could be protected by copyright law. I have myself seen court briefs in copyright cases, in which advocates relied on this "one-liner" to basically argue that anything could be protected by copyright law. When the full reasoning of the Supreme Court became known such views could no longer be upheld.

The Supreme Court stated that although newly coined words or names could theoretically be protected by copyright, this was only exceptionally possible, i.e. when a word in question possessed an extraordinary degree of originality. Quite forcefully

the court observed that the belief every subjectively new creation of the human mind was a copyright work had no legal foundation and could even lead to the deprecation on the notion of "creativity". Although the decision explicitly confirms that works created solely for utilitarian purposes (including industrial products) may be protected by copyright (but this has not been seriously questioned for a long time now), it also takes the view that the purpose of a work can not in itself be sufficient to ensure copyright protection. In other words, the Supreme Court rejects the idea that the element of creativity can be discerned in the particular way the work is used. Consequently, in the case at hand the fact that the plaintiff "created" the connection between the word (trademark) and a certain category of goods is not enough – the word as such must be autonomously individual and should be capable of being used on various fields of exploitation. The Court correctly observed that the plaintiff essentially wanted to protect the idea of using a certain word in a certain context, whereas ideas are outside the scope of copyright protection.

The reported decision seems to try to rein in the much too broad generosity of some courts and commentators ready to find traits of copyright works almost everywhere. It also seems to take into account that although sometimes certain subject matter may be protected by various kinds of IP rights (e.g. may be a copyright work and a registered trademark at the same time), these rights have different purposes and the lines between them should not be too easily blurred.

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