

Kluwer Copyright Blog

A black and white photograph of a red bus

Maurizio Borghi · Tuesday, March 13th, 2012

Patents Court London, 12 January 2012, Temple Island Collections Ltd v New English Teas Ltd & Nicholas John Houghton.



A photograph of a red Routemaster bus travelling across Westminster Bridge with the Houses of Parliament and the bridge shown in gray, which shares visually significant elements with the claimant's photograph, infringes copyright, despite the fact that it differs at some points in its composition. Claimant's photograph was published in February 2006 and has been used by the claimant on souvenirs. The defendants produce tea: the company's best selling packs of tea include tins and cartons bearing images of 'Icons of England'.

Determining infringement, requires a qualitative assessment of the reproduced elements. The elements which have been reproduced in this case represent a substantial part of the claimant's work, which qualifies as a photographic work rather than a mere image on the basis of the skill, labour and judgement involved in the creation of the photograph. This is because these elements include a key combination of the visual contrast features used in the claimant's photograph with the composition of the same scene, irrespective of the fact that some important compositional elements are absent.

63. I have not found this to be an easy question but I have decided that the defendants' work does reproduce a substantial part of the claimant's artistic work. In the end the issue turns on a qualitative assessment of the reproduced elements. The elements which have been reproduced are a substantial part of the claimant's work because, despite the absence of some important compositional elements, they still include the key combination of what I have called the visual contrast features with the basic composition of the scene itself. It is that combination which makes Mr Fielder's

image visually interesting. It is not just another photograph of clichéd London icons.

64. Although the techniques used by Mr Fielder to achieve the effect he did may have been simple, the result has an aesthetic quality about it which is the product of his own work. The blank sky serves to emphasise the buildings and gives the whole image a dramatic appearance and the bright red bus stands out even more prominently. This has been reproduced. The basic composition of the image has the Routemaster driving from right to left on the bridge but there is more to it than that. The bus is actually framed by the building. Although the framing is a little different in Annex 2, to my eye the essence of the framing effect has been reproduced. Although the bus is larger in Annex 2 than Annex 1, in both images the bus roughly in scale with the facade of the Houses of Parliament. Also the riverside facade of the building is a prominent feature. There are no other vehicles clearly visible and although there are some small people visible they are not prominent. This all gives the image an element of simplicity and clarity.

For the full text of the judgment, click [here](#).

(Stavroula Karapapa & Maurizio Borghi, [Brunel University](#)).

A full summary of this case will added to the Kluwer IP Cases Database (www.KluwerIPCases.com).

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