

# Kluwer Copyright Blog

## A radiant heart for Madrid

Patricia Mariscal (Elzaburu) · Monday, December 17th, 2018



The Madrid Court of Appeal dismissed an appeal filed by the owners of a figurative mark whose central element is a radiant heart, drawn using thick black lines and coloured in red, this being used by the defendants to market numerous articles and souvenirs sold in many shops in Madrid. The Court upheld the first instance court's judgment, finding that the defendants' use of the *Radiant Heart* constitutes plagiarism of the work by the late graffiti artist of the 80s, Keith Haring.

Keith Haring was a graffiti artist belonging to the Pop Generation of the 80s and one of the drivers of the so-called "demotic culture" that combines fashion, art and music. Many of his artistic creations include the figure of the "radiant heart", drawn with thick black lines and coloured in red. Some of these works have been exhibited in museums and are registered in the US Copyright Office. The heart does not generally appear on its own but accompanied by other elements, thus making up a larger creative set.



On their part, the Bartolomé Alvarado brothers are the owners of a Spanish composite trademark, made up of a heart that is practically identical to that described above, next to the word "Madrid". The sign is registered for a wide variety of goods (toys, stationery, magnets, textiles, etc.), these being marketed by both brothers and sold in various shops in the Spanish capital.

In 2015, The Keith Haring Foundation, the owner of all the rights in Haring's artistic

legacy, instituted proceedings against the Bartolomé Alvarado brothers for infringement of intellectual property rights. The defendants argued that there was no artistic work as such because although the heart is an element present in some of Haring's works, thus shaping his artistic style, they lack the individuality and singularity to be considered intellectual works in isolation and separately from the rest of the elements making up the artistic sets of the author.

On 21 March 2016, Mercantile Court No. 5 in Madrid issued a ruling finding infringement of intellectual property rights in the work of Haring, and consequently cancelling the Spanish trademark registration and ordering the defendants to cease marketing the goods and make a payment of 20,000 euros for moral damages.

The defendants filed an appeal with the Madrid Court of Appeal, which issued its ruling on 23 November 2018.

The Court of Appeal also rejected the defendants' argument, concluding that the Radiant Heart is an element that, in itself, already has sufficient singularity and creativity to be deemed an original work: *"the figure of the cited radiant heart, as presented, regarding its shape, colour and outline, constitutes a particularly characteristic and relevant element of the "Radiant Heart" work of art, due to its location and size in the visual set. Furthermore, this is not solely applicable to this work by KEITH HARING, but its use appears with the same morphology in other untitled works by this author."* Consequently, the judgment given in first instance was fully confirmed.

This judgment of the Court of Appeal is paradigmatic within the scope of visual arts, allowing for some relevant lessons to be learned. In particular, that the different elements of an artistic composition can be considered intellectual works in themselves and isolated from the rest of the composition as long as they are sufficiently singular and relevant within the set as a whole.

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