

Kluwer Copyright Blog

No more dance for Baila!

Francesco Spreafico · Monday, November 7th, 2011



The Tribunal of Rome has rejected the appeal brought by Reti Televisive Italiane (RTI, Mediaset Group) and Endemol, respectively the broadcaster and the producer of the Mediaset TV program “*Baila!*”, against the first instance decision in the urgent proceeding for provisional measures of the same court, holding that the program was an unauthorized copy of the popular – and previous in time – TV program “*Ballando con le Stelle*” (Translation: “Dancing with the Stars”) of the national TV broadcaster, RAI.

The case started the beginning of September. Media reported that in the claim for provisional measures against RTI and Endemol, the popular show presenter of *Ballando con le Stelle* (Milly Carlucci), who is also one of the authors of the program, together with RAI, accused that the broadcasting of *Baila!* was an infringement of their rights on the format of their program, which, in its turn, is the Italian version of the BBC program “Strictly Come Dancing”, that RAI is licensed to produce and broadcast in Italy. Actually, the first round of the case has seen also the involvement of BBC, accusing itself Mediaset of copyright infringement (however, so far there are no news about how the case has progressed in this respect). RTI and Endemol opposed that *Baila!* was an adaptation of the Latin American program “*Bailando por un sueno*”, for which they were licensed in relation to the Italian market, whose format was different from that of *Ballando con le Stelle*.

On 26 September, the first instance judge issued a restraining order inhibiting RTI the broadcasting of the program. Notwithstanding the order, *Baila!* went live the night after just with some format changes and, in parallel, RTI and Endemol appealed the decision. *Baila!* did not go far, however. After a few episodes, considering the unexpectedly low audience share results, RTI and Endemol decided to stop it.

In the meantime, the battle continued in court and a few days ago the Tribunal of Rome issued its decision on the appeal. Media commented that in the reasoning of the decision, which is still unpublished, the Tribunal pointed out that by comparing the format of *Baila!* with that of *Ballando con le Stelle*, the two programs did not present significant structural, narrative and operational differences: in particular, with respect to the narrative “supporting idea”, the expressive means used, the characterization of the roles, the sequence of relevant events, the purpose of the narration, the images, the two formats were very similar. The Tribunal also held that *Baila!* measured the

ability of competitors using the same kind of dance and set design as in *Ballando con le Stelle*, costumes used in the programs were very similar, and the systems of selection of participants/winners had similarities as well. According to the court, in the two shows there was also a type of recurring characters and experienced dancers accustomed to competitions. For these reasons, the Tribunal found an apparent plagiaristic conduct by the authors of *Baila!*, notwithstanding the changes operated to the format right before the launch of the program.

From what news tell, the *Baila!* judgment of the Tribunal of Rome is an important landmark decision setting forth criteria for the protection of TV Program format. To be noted that both the first instance and the appeal relate to an urgent proceeding for provisional measures which will be followed by a proceeding on the merits of the case. The proceedings on the merits will analyze in depth the actual existence of a copyright infringement. Let's see if the merits confirm that this time the show must NOT go on!

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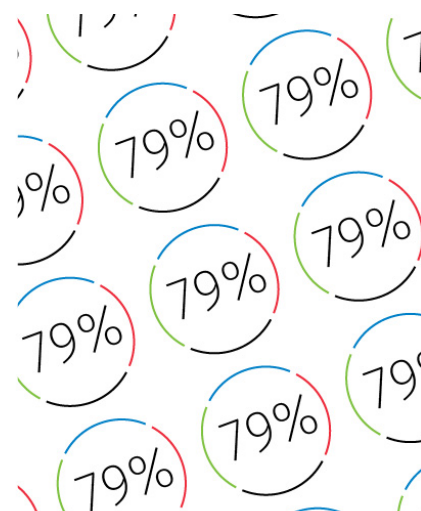
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