



USD SYSTEM INTERNATIONAL EDITIONS CONSORTIUM

*" A thing is not just because it's the law;
it must be the law because it is just."*
Montesquieu – *The Spirits of the Law* (1748)

Report on Judgments Found in Favor of the Literary and Artistic Work Entitled "Changer la Ville"

**First Legal Precedent Regarding
an Unpublished Prototype Book from
the Intellectual Passport Omnibus
(aka IPCB)**

A Ruling in favor of an unpublished original creation in an early version of the Intellectual Passport Copyright Business (IPCB) Omnibus Collection,

Against

A “Model” (European form of design patent) subsequently registered by a third party at the INPI (National Institute of Intellectual Property, the French equivalence of the US Patent and Trade Mark Office).

PREAMBLE

- Mr. Pierre AGUESSE is a French creator of an aesthetic container (a container for recovery of used batteries) and the author of a literary and artistic work entitled “Change the City”, a book in an unpublished 1994 IPCB literary and artistic Omnibus collection. His creation is embedded in his book “Change the City”.
- On July 31st 1997, Mr. Jacques BRISSON and Mr. Michel BILLIoud registered a “Model” (the European form of design patent) on this container with the INPI (the French equivalence of the US Patent and Trade Mark Office), one year after this product had been introduced into the market by the creator.
- After learning that he was the creator and is legally the author of the original design, refusing to acknowledge Mr. Pierre AGUESSE creator’s rights, and to settle out of court, Mr. Jacques BRISSON, Mr. Michel BILLIoud and the firm JEANTET SARL initiated this legal proceedings against the chains of stores that were exploiting the product included in his work namely, SLYMAG SARL Super U and Central Regional System East U (System U’s Eastern and Regional Head office).
- Mr. Pierre AGUESSE intervened voluntarily by joining in the court case alongside SLYMAG SARL Super U and Central Regional System East U, in his status as: the creator of the original design of the aesthetic container for used batteries, the author of the literary and artistic work, the book entitled “Change the City” in the unpublished 1994 IPCB Omnibus collection, the licensor and owner of the firm “ADI” Alliance Development Innovation (Alliance Developpement D’innovations) that guaranteed his creator’s ownership rights to the aforementioned chain of stores.
- At the time of this court case, an earlier version of the IPCB was in use which did not include the USD System financial Forecast. This component is integrated in the current version.
- Mr. Pierre AGUESSE won the case at all court levels: The Court of First Instance (lowest Court), the Court of Appeal and the Supreme Court of the Republic of France (Cour De Cassation).
- The final Supreme Court Judgment was delivered on July 4th, 2006. SCP Jacques and Xavier VUITTON (the Law firm of the State Council and the Supreme Court) subsequently issued, on July 7th 2006, a written notice to Mr. Alain LECLERC (the Plaintiffs’ lawyer), reminding him that execution of the Supreme Court’s dismissal of the appeal must be completed within four months of the date of serving the said Judgment, or in any event, it must be completed within two years of the delivery of this decision, even in the absence of such notification.

ABOUT THIS DOCUMENT AND THE TRANSLATION

In reading this document, please note that:

- The courts refer to Mr. AGUESSE’s literary and artistic work in his IPCB entitled “Change the City” as “the book” or “the work” or Voluntary Intervention (submission); having being submitted when he intervened voluntarily in the case.
- The expression “Adversarial Decision” is found in the court proceedings. It relates to the Adversarial system (or adversary system) of law that is used in this court case. This legal system relies on the contest between each advocate and lawyer representing his or her party's position and involves an impartial person or a group of people, usually a judge or jury, trying to determine the truth of the case. The use of this system is reflected in statements such as the ruling was rendered by “Adversarial Decision.” It is also reflected in the texts of the recorded proceedings which include some of the arguments presented by the lawyers of each side, which were subsequently addressed by the Tribunal during its discussion, debates and deliberation to arrive at its rulings.
- Future versus present tense was used in specific parts of the original Court documents; this was retained in the translation in order to preserve authenticity.
- The arguments presented by BRISSON and partners (later declared by the court as counterfeiters of Mr. Aggeusse’s creation) are written in blue font for ease of reading.
- The designations S.A.R.L. and SARL are used in the court texts interchangeably.
- This document covers the texts of the proceedings of three court levels:

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**FIRST COURT LEVEL
(COURT OF FIRST INSTANCE)
COMMERCIAL COURT OF LYON**

30/09/03 JUDGMENT DATED SEPTEMBER THIRTIETH, TWO THOUSAND THREE

**Roll No 01J03824: This case was brought before Court by assignment dated
October 25, 2001**

BETWEEN :

- Mr. Jacques BRISSON
88 Rue Charton, 9600 OULLINS
PLAINTIFF

- Mr. Michel BILLIoud
5 Petite Rue Collonges, 69230 ST GENIS LAVAL
PLAINTIFF

- The Firm JEANTET SARL
493 Courtois , 69390 M1LLERY
PLAINTIFF

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Represented by lawyer: Yves BERTRAND, Cap No.
54 Cours Lafayette, 69003 LYON

**And :
MAGAS**

- The SLYMAG SARL Super , LYON Firm Commercializing
113 Boulevard Yves Farge 69007 LYON
DEFENDANT
Represented by Lawyer: Bovier HENRI , Cap No. 704
21 Rue Ferrandiere, 69002 LYON

- CENTRAL REGIONAL SYSTLME U
43 Rue Eugène Ducretet, 68200 MULHOUSE
DEFENDANT
Represented by Lawyer: Bovier HENRI , Cap No. 704
21 Rue Ferrandiere, 69002 LYON

- Mr. Pierre AGUESSE
The Feuillardes
44450 Saint Julien de Concelles
VOLAUNTARY INTERVENER
Represented by Lawyer: Bovier Henri , Cap No. 704
21 Rue Ferrandiere, 69002 LYON

Whereas,

The court will use various documents submitted in evidence;
It will refer to specific ones and direct the parties to those as needed.

Given that,

The book produced in the debates by Mr. AGUESSE, intervening voluntarily, is dated 1994;

Given that,

There is no evidence that this piece has been forged for the needs of the case;

Given that,

Written evidence is produced to prove the truth of the matter and the existence of the book, and that the drawings on page 129 describe precisely the battery recovery container;

Whereas,

There is, still, no reason to question the good faith of the witnesses whose knowledge of the facts preceded the date of the registration (*of the model*) by Messrs. BRISSON and BILLIOUD;

Whereas,

Considering Article L511-3 of the Code of Intellectual Property,
The Court WILL declare and decree that the model is void / null for lack of novelty;

Whereas,

It WILL declare the anteriority of the Creation of Mr. AGUESSE,
It Will, accordingly, dismiss the firm Jeantet, and Messrs. BRISSON and BILLIOUD's claims of counterfeit and unfair competition;

Whereas,

The Tribunal WILL
Equally Dismiss the firm Jeantet and Messrs. BRISSON and BILLIOUD's entire set of claims against the companies SLYMAG, Central Regional System East U, ADI, and against the Lawyer MAURAS and Mr. Pierre AGUESSE;

Considering that,

The Tribunal WILL

Declare and rule that, the Model No. 974631 of July 31st, 1997 constitutes a Counterfeit of Mr.

Pierre AGUESSE's creation which appeared in the work "Change the City" and That, the firm Jeantet and Messrs. BRISSON and BILLIOUD conjointly and severally apply to the INPI requesting the delisting (removal/ deletion) of this model from its Registry, and

That they bear the due expenses where such are required; (*Note to the reader: conjointly and severally means that each of them is a grantor for the other; each is liable to fulfill the obligation, if the other does not do so*)

Considering the foregoing,
The Court WILL

Forbid the firm Jeantet and Messrs. BRISSON and BILLIOUD, from directly or indirectly, commercializing the above mentioned model unless expressly agreed upon by Mr. AGUESSE or assigns; under penalty of 150 euros for each noted infringement, *(Important Note to the reader: In France Commercialization encompasses all activities, processes and steps inclusive of drawings for manufacturing, production (manufacturing per se), marketing, distribution, selling etc.)*

The court reserves the right to enforce the penalty;

Given that,
The Plaintiffs in the main proceedings cannot ignore the status of Mr. Pierre AGUESSE, as per the mail of the June 5, 2000 and /or the correspondence with their own counselors,

The Court WILL consider that the plaintiffs have commissioned an abusive procedure.

Whereas,
One cannot, but consider that a counterfeit seizure consisting of taking pictures and demanding the handing-over of documents without clear presence of a counterfeit, can validly harm the image of the COMPANY SLYMAG and create a prejudice,

The Court will proceed with the latter's claim in this regard.

II- imperatives

Given that,
The procedure initiated against the SLYMAG companies and Central regional East System U by the firm Jeantet and Messrs. BRISSON and BILLIOUD involves exactly the same facts as those invoked in the summons that the same plaintiffs delivered against the firm ADI and the lawyer Mauras;

As a consequence,
It is considered judicially appropriate to order the joinder of these two procedures that are registered under numbers 01J3824 and 02J1171.

Whereas,

THE COURT WIL

GRANT RECOGNITION to Mr. AGUESSE's Voluntarily submission (*his literary and artistic work entitled "Change the City"*).

PRONOUNCE AND RULE that the model no. 974631 registered by Messrs. BRINSON and BILLIOUD is void / null for lack of novelty.

DISMISS the firm Jeantet and Messrs. BRISSON and BILLIOUD's ENTIRE SET of claims against the companies SLYMAG, Central Regional System East U, ADI, the lawyer Mauras and Mr. Pierre AGUESSE.

PRONOUNCE AND RULE that, the model no. 974631 filed by Messrs. BRISSON and BILLIOUD constitutes a counterfeit of the creation of Mr. Pierre AGUESSE, as presented in his work "Change the city".

CONDEMN Messrs. BRISSON and BILLIOUD conjointly and severally to apply to the INPI for cancellation/ delisting of the said model from its registry and bear the associated expenses, where appropriate.

FORBID the firm Jeantet and Messrs. BRISSON and BILLIOUD from commercializing the said model, directly or indirectly, unless approved by Mr. AGUESSE or his assigns, and under penalty of 150 euros for each noted violation.

RESERVE the right to enforce the aforementioned penalty.

CONDEMN the firm Jeantet and Messrs. BRISSON and BILLIOUD, conjointly and severally, to pay the sum of 1000 euros to each of the companies SLYMAG, Central regional East system and, to pay Mr. AGUESSE the sum of 500 euros, in view of the abusive procedure undertaken against them.

CONCLUDE that SLYMAG companies' call upon the firm ADI for redemption of its guarantee is well founded.

CONDEMN the firm Jeantet and Messrs. BRISSON and BILLIOUD, conjointly and severally, to pay the sum of 1, 500 euros to each of the three aforementioned defendants pursuant to section 700 of the NCPC. (*Note: this is the legal reference encompassing the code for commercial rights*).

DISMISS all other claims of the companies SLYMAG, Central regional East system U and Mr. AGUESSE.

PRONOUNCE the provisional execution of the judgment, notwithstanding appeal or opposition, that the companies SLYMAG, Central regional East System U, conjointly and severally provide a bond to the firm Jeantet, and Messrs. BRISSON and BILLIOUD, conjointly and severally, in an amount equivalent to the total sentences of this judgment, from a financial institution member of the AFB, which duration will be that of the potential appeal procedure, the cost of the latter will be borne by the party that succumbs in case of appeal;

CONDEMN the firm Jeantet and Messrs. BRISSON and BILLIOUD, conjointly and severally to pay the full costs of the present Court of First Instance proceedings,

Whereas,

In view of article 1382 of the civil code ~ pertaining only to engaging in abuse of procedure,

The Tribunal will

CONDEMN the firm Jeantet and Messrs. BRISSON and BILLIOUD, conjointly and severally to Pay the sum of 1000 euros to each of the companies SLYMAG, Central regional East system, and Pay Mr. AGUESSE the sum of 500 euros, based on the same reason;

Given that,

Mr. Pierre AGUESSE was aware of the existence of the counterfeit and its commercialization for two years, and had not initiated any substantive legal action in terms of what he merits in this regards, his calling today for conviction based on violation of his moral rights and / or commercial prejudice is unfounded, besides that these claims have not been substantiated,

The Court will

DISMISS these requests;

Whereas,

Dissemination of this product (*descriptive of the original creation in the book*) is viewed as confidential; it would not be of proper Justice to satisfy the claims for additional damages and interest by ordering the publication (advertisement in a judiciary communiqué) of the rendered verdict at the cost of the principal plaintiffs,

The Tribunal will

DISMISS Mr. AGUESSE's request in this regard;

Whereas,

The Court recognize the binding guarantee that ADI provided to the companies SLYMAG and Central East Regional System U, It will

RULE THAT

SLYMAG and Central East Regional System U have the basis to call for redemption of that guarantee;

Whereas,

It would not be equitable that the companies SLYMAG. Central East Regional System U and Pierre AGLUESSE be burdened with their irrecoverable expenses,

The Court will

CONDEMN the firm JEANTET and Messrs. BRISSOIN and BILLIOUD jointly and severally, to pay each of the aforementioned trio defendants the sum of 1,500 euros pursuant to Article 700 of the NCPC (*legal reference encompassing the code for commercial rights*);

In view of, and in considering,

The extended duration and the risk,

THE TRIBUNAL GRANT PROVISIONAL EXECUTION OF THE JUDGMENT, pending appeal or opposition, that the companies SLYMAG and Central regional East system U, conjointly and severally, provide a bond to the firm JEANTET and Messrs. BRISSON and BILLIOUD jointly and severally in an amount equivalent to the total sentences of this judgment, from a financial institution member of the AFB, which duration will be that of the eventual appeal proceedings, the cost of the latter will be borne by the party that succumbs in case of appeal;

Whereas,

The expenses shall be borne by the party that succumbed.

As a consequence,

THE COURT OF FIRST INSTANCE PUBLICLY RULES BY ADVERSARIAL DECISION* TO:

ORDER the joining of the two files: 01 files J03E24 and 02J1171.

GRANT RECOGNITION to Mr. AGUESSE's voluntarily submission (*his literary and artistic work entitled "Change the City"*).

CONFIRM the anteriority of Mr. Pierre AGEUESSE's creation.

THE EXPENSES referred to in Article 701 NCPC have been determined as the net sum of 115.47 euros (69.45 + 46.02)

Thus tried, judged and pronounced at a public hearing of the Commercial Court of Lyon, on September 30, 2003.

Hereby ruled and delivered

The president

The first Registrar

** The expression "by adversarial Decision" refers to decision made through the application of the Adversarial legal System ~ sees the preamble.*

* * *

SECOND COURT LEVEL
LYON COURT OF APPEAL
CIVIL DIVISION FIRST CHAMBER

RG 03/06633

JUDGEMENT OF May 27, 2004

Decision by the Commercial Court of Lyon rendered on September 30th, 2003

RG No. 2001/3824

APPELLANTS

S.A.R.L. JEANTET
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Represented by SCP-AGURAUD NOUVELLET solicitors of the Court
Assisted by Mr. GODARD, lawyer, LYON Bar Association

Mr. Jacques BRISSON
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Represented by SCP-AGURAUD NOUVELLET solicitors of the Court
Assisted by Mr. GODARD, lawyer, LYON Bar Association

Mr. Michel BILLIOUD Petite Rue Connes
69230 ST GENIS LAVAL
Represented by SCP-AGURAUD NOUVELLET solicitors of the Court
Assisted by Mr. GODARD, lawyer, LYON Bar Association

RESPONDENTS

S.A.R.L. SLYMAG SUPER U
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Represented by SCP-JUNILLON WICKY, solicitors of the Court
Assisted by Mr. GAULTIER, Lawyer PARIS Bar Association

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Represented by SCP-JUNILLON WICKY, solicitors of the Court
Assisted by Mr. MAULTIER, Lawyer, PARIS Bar Association

Lawyer Jean-Luc MAURAS

In his capacity as liquidator of the Company ALLIANCE DEVELOPPEMENT INNOVATIONS (ADI)

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Represented by the SCP DUTRIEVOZ, solicitors to the Court

Assisted by Mr. LECLERC, Lawyer, Paris Bar Association

Mr. Pierre AGUESSE

the Feuillardes

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Represented by the SCP DUTRIEVOZ, solicitors to the Court

Assisted by Mr. LECLERC, Paris Bar Association

HEARING OF ARGUMENTS ON APRIL 1st, 2004

COMPOSITION OF THE COURT during the debates and deliberations:

Mr. JACQUET, President,

Mr. Roux, counselor,

Mrs. BIOT counselor,

Mrs. JANKOV, clerk, attended during the debates

THE JUDGMENT WAS RENDERED BY ADVERSARIAL DECISION;

DELIVERED at a public hearing by Mr. JACQUET, President,

in the presence of Mrs. JANKOV, Registrar, who signed the minutes.

FACTS - PROCEDURE – CLAIMS OF THE PARTIES

On July 31, 1997, Mr. Jacques BRISSON and Mr. Michel BILLIoud registered with the INPI of Lyon, a model of a container for recovery of used batteries under No. 97463, the manufacturing and exploitation of which were entrusted to the Firm JEANTET, with headquarters in MILLERY (Rhône).

Arguing that the Company SLYMAG operating the SUPER U store in LYON displayed containers which configuration was very close to the model it operated, the firm JEANTET and Messrs. BRISSON and BILLIoud carried out a counterfeit seizure on September 10, 2001, which was duly authorized, using an order issued on September 7th 2001 by the President of the Tribunal de Grande Instance of Lyon. They, then, summoned the Companies SLYMAG and CENTRAL REGIONALE SYSTEM U before the Tribunal of Commerce of Lyon for counterfeiting and unfair competition towards the Firm JEANTET, requested its prohibitions and the usual measures of advertising (judiciary communiqué), and condemning the companies (defendants), jointly and severally, to pay them compensation for damage in an amount to be determined by experts.

The Firm JEANTTT and Messrs. BRISSON and BILIJOU also summoned the firm ALLIANCE DEVELOPMENT INNOVATIONS (ADI) and the lawyer Jean-Luc MAURAS – in his capacity as representative of the creditors of the Firm ADI, which declared Judiciary bankruptcy protection on September 5, 2001 – accusing this company of manufacturing and commercializing the containers displayed in the SUPER U store.

Mr. Pierre L'AGUESSE, author of the model commercialized by the firm ADI intervened voluntarily in the case.

BY JUDGMENT OF SEPTEMBER 30TH 2003, the Tribunal of Commerce of Lyon, Considering that the creation of Mr. AGUESSE, which appeared in the work "Change the City" in 1994, was anterior to the registered model no. 97463: it pronounced that the model was annulled for lack of novelty, dismissed all the claims made by the firm JEANTET and Messrs. BRISSON and BILLIQUOD, condemned them, with provisional execution, to apply for the striking off/ delisting of the model from the registry (of the INPI), to cease all commercialization of this model unless approved by Mr. AGUESSE, and to pay damages and interest to the Companies SLYMAG, THE CENTRAL REGIONAL SYSTEM U as well as to Mr. Pierre AGUESSE.

THE FIRM JEANTET and Messrs. BRISSON and BILLIQUOD

Appealed this judgment, and halted the provisional execution on December 23rd, 2003 by an order from Mr. First President of the Court of Appeal that set the case for hearing on April 1st 2004.

THE APPELLANTS CONCLUDED BY:

- ♦ Calling for the reversal of the Judgment by contesting the probative value of the document invoked as prior art, both in regards to its content and its date.
- ♦ Commenting that the system of the "library of inventions" (*Referring to the former name of the USD System*) permits producing documents, which are not disclosed, are not subject to legal deposit and do not provide opportunity for objective dating.
- ♦ Requesting the Court apply the new law - that stems from the Act of July 25th. 2001- By stating that, the model allegedly anterior was not disclosed, and additionally, declare by virtue of the former law, that the produced documents have no valid anteriority,
- ♦ Accusing Mr. AGUESSE to have counterfeited JEANTET's container model since 1998, and to have committed acts of unfair competition and in bad faith, with the help of the companies SLYMAG and CENTRAL REGIONAL SYSTEM U, through capturing considerable market of the containers equipment in the U store.

THE FIRM JEANTET and Messrs. BRISSON and BILLIoud therefore Request that:

THE COURT ORDER:

- ♦ Mr. Pierre AGUESSE to cease any form of commercialization of any container reproducing features of the model under litigation, under penalty of 1,500 euros fine per infringement noted, following notification of the future judgment;
- ♦ The Firms SLYMIAG and CENTRAL REGIONAL SYSTEM U to outright withdraw the containers covered by the official counterfeit seizure record of the October 10, 2001, under penalty of 1,500 euros fine per infringement noted, following notification of the future judgment;
- ♦ Mr. Pierre AGEUSSE, the firms SLYMAG CENTRAL REGIONAL COMPANY and SYSTEM U to remit to the Firm JEANTET and Messrs. Jacques BRISSON and Michel BILLIoud the counterfeit containers that they detained, subject to a fine of 150 euros in penalty per day delay, following the notification of the future judgment;
- ♦ To publish an extract of the future judgment in four newspapers and magazines of choice of the appellants and at the expense of the respondents; the cost of every insertion remains nevertheless limited to the sum of 2,000 euros.

They further seek that the respondents be condemned to pay the sum of 1 0000 euros to each of them in compensation for moral prejudice, and pay them a sum of € 50,000 in compensation for the financial loss they suffered due to ordering an expert report.

Finally, they claim compensation pursuant to Article 700 of the New Code of Civil Procedure.

THE FIRM CENTRAL REGIONAL SYSTEM U AND SLYMAC U SUPER COMPANY CONCLUDED THAT THEY:

- ♦ Are for reaffirmation of the judgment, with the exception of requesting that the damage awarded for abusive procedure be increased to 10,000 euros.
- ♦ Reaffirm their call on the firm ADI for redemption of its guarantee, and seeking 1,500 euros of damage, pursuant to Article 700 of the New Code of Civil Procedure.
- ♦ Reject the appellants' argument that the validity of the registered model should be assessed in light of the Act of July 25th, 2001 - that transposed in France the EU Community Directive of October 13th 1998 - in particular, Article 5 I 1 L -3 in its new wording, which states that: it must be regarded as a new model if, on the date of filing of the application for registration or the date of claimed priority, no identical design has been disclosed.

- ♦ Maintain that the applicable law is the one in force on July 31, 1997, the registration date of the model, which means that: the first applicant is assumed to be the creator unless proven otherwise and upholding that, in this case, Mr. AGUESSE has the basis for asserting entitlement to his rights as the creator.
- ♦ Assert that, in any case, they have not committed any fault, since Mr. AGUESSE and the firm ADI had the creators' evidence. Additionally, the Company SLYMAG had not sold containers for batteries, but simply placed them at the entrance of the establishment.

MR. PIERRE AGUESSE AND THE LAWYER JEAN-LUC MAURAS, IN HIS CAPACITY AS LIQUIDATOR OF THE FIRM ADI, CONCLUDED THAT THEY:

- ♦ Are for reaffirmation of the judgment,
- ♦ Reject the firm JEANTET and Messrs. Michel BILLIoud and Jacques BRISSON's demands.

THEY REQUEST THAT THE COURT:

- ♦ Order the filing for striking off/ annulment of the registration of the design model No. 974631 of Messrs. Michel BILLIoud and Jacques BRISSON, from the Registry of the National Institute of Industrial Property.
- ♦ Condemn the firm JEANTET, and Messrs. Michel BILLIoud and Jacques BRISSON, jointly and severally, to repair the prejudice that Mr. Pierre AGUESSE suffered, and to pay him the sum of 10,000 euros in compensation for infringement on his author's moral rights.
- ♦ Condemn the firm JEANTET, Messrs. Michel BILLIoud and Jacques BRISSON, jointly and severally, to compensate Mr. Pierre AGUESSE and the firm ADI for the prejudice suffered, and pay them the sum of 1.2 million euros for such damage.
- ♦ Order the publication of an extract of, or the entire future verdict in three newspapers or magazines of Mr. Pierre AGUESSE's choice at the expense of the firm JEANTET, and Messrs. BILLIoud Michel and Jacques BRISSON, in complementary damage and interest.
- ♦ Apply Article 700 of the New Code of Civil Procedure, for further indemnity of 3,100 euros

THE RESPONDENTS:

- ♦ Reaffirm that : Mr. AGUESSE created the model ENVIRONET, he entrusted its distribution to the firm ADI, and maintain that Messrs. BRISSON and BILLIoud reproduced its characteristic features and original elements, that is, a container with a square base, a cylindrical body with transparent window and a removable lid with an opening and surmounted by a cylindrical Stud.

- ♦ Insist that the applicants acted in bad faith, for despite having been warned of Mr. AGUESSE's rights on the model through a letter dated June 5th, 2000; they still proceeded with a counterfeit seizure of goods in the establishment of one of their customers, then, initiated the counterfeit proceedings without involving Mr. AGUESSE in the case, whilst he was the only one who can legitimately contest their claims.
- ♦ Consider, as far as they are concerned, that the anteriority of the model created in 1994 has been proven by the attestations, the invoices and the publications produced in the debates.

IMPERATIVES AND DECISIONS

Whereas,

The validity of the applicant's rights must be determined on the date on which the right was born;

Given that,

The model registered on July 31, 1997 by Mr. BRISSON and BILLIOLID is subject to the law of July 14th, 1909 regarding its validity,
And that, it was deposited prior to the Act of July 25th, 2001, which transposed the Community Directive of October 13, 1998 into the French law, and the new provisions ensuing from this later (July 25th Act), with respect to acts of infringement committed after its entry into force;

Whereas, as a result

The Appellants benefit from the presumption of creation, established by article L 511-2 of the Code of Intellectual Property old version;

Whereas, accordingly,

To rebut this presumption, Mr. AGUESSE must provide sure proof of anteriority as to its date and its contents, even if it is not disclosed;

Given that,

The model of the container of used batteries included on page 128 and 129 of the book entitled "Change the City", written by Pierre AGUESSE and published in 1994 by the BLEUE LIBRARY of Inventions under number 22 21 presents the essential characteristics of the design model registered by Mr. BRISSON and Mr. BILLIOUD on July 31, 1997, that is: a square base, a cylindrical body having an opening, and a cap cover pierced with two holes - that produces the same overall impression as that of the creation claimed later as the object of the said registration.

Whereas,

If the work had not been the object of commercialization, it would have been published by a publishing company listed on file with the National Library of France;

Given that,

The attestation of Mr. VILLEPOUX, who handled Mr. AGUESSE's inventions file from May to December 1994, in order to edit the latter's work "Change the City", established that the models of containers in the form of battery were included in the work;

Given that,

Messrs. DUBOIS and BAUDINET's attestations confirm their knowledge of the book "Change the City", and establish that Mr. AGUESSE had created a gamut of urban furniture called ENVIROTIQUE which encompassed containers for used batteries ~ without providing more specifics of the said models;

That there is a correspondence dated October 29, 1994 from Mr. BAUDIANT to Mr. AGUESSE in which he refers to drawings of new containers in the form of a battery ~ the details of which are not discussed;

Considering that,

These elements "substantiate" that Mr. AGUESSE had created in 1994, an original model of a container in the form of a battery for the recovery of used batteries, and that he also has the basis for asserting entitlement to his exclusive authorship rights (copyrights) in order to oppose the claims of the Firm JEANTET and Messrs. BRISSON and BILLIoud, as well as to seek annulment of the NPI registration for lack of novelty of the design model no. 974 63, which they deposited three years later;

As a result of these considerations,

THE JUDGMENT IS CONSEQUENTLY UPHELD in terms of : dismissing the counterfeit claim, and ordering the annulment of the design model registered by Mr. BRISSON and BILLIoud, with a decree to forbid its exploitation;

Moreover, for the prejudice suffered,

AWARD Mr. AGUESS the sum of 3,000 euros, in compensation for suffering the infringement on his copyright,

AWARD the sum of 15,000 euros to the firm ADI which manufactured and commercialized the container model of AGUESSE until its judiciary liquidation, in damage for suffering financial prejudice,

AWARD Mr. AGUESSE the sum of 10,000 euros, in damage for the market loss suffered since 1997 as a result of the firm JEANTET's exploitation of the model to the detriment of the anterior creation, such being a fair compensation, based on the latter's sales report for the fiscal years 2001-2002 and 2003;

Given,

The cessation of activity of the firm ADI, there is

NO REASON to grant the requested demand for publication;

Given that,

The demand of the firms SLYMAG and CENTRAL REGIONAL SYSTEM U for **REDEMPTION of the guarantee BECOMES DEVOID OF PURPOSE;**

Whereas,

The respondent companies have not established that the pursuit of the appeal emanated from malevolence, and caused them a particular harm; the Court Will, DISMISS their request for complementary damages and interest, based on abuse of procedure.

But, Given that,

It would be inequitable to leave them with the burden of their entire irrecoverable expenses,

The Court will, on one hand,

AWARD Mr. Pierre AGUESSE and the lawyer Jean-Luc MAURAS as ex officio,

And will on the other hand,

AWARD the Companies SLYMAG SUPER U and CENTRAL REGIONAL SYSTEM U the sum of 1,500 euros each, in indemnity, pursuant to Article 700 of the New Code of Civil Procedure;

On These Grounds,

THE COURT

UPHELD all the provisions of the judgment of the lower court in its entirety,

And added,

CONDEMN THE FIRM JEANTET, Mr. Michel BRISSON AND Mr. Jacques BILLILOUD to:

PAY

Mr. Pierre AGUESSE the sum of three thousand euros (3,000 euros), in compensation

For the infringement on his Copyright,

And

The sum of ten thousand euros (10,000 euros), in compensation for the financial damage;

PAY

The lawyer Jean-Luc MAURAS, the sum of fifteen thousand euros (15,000 euros) - in his official capacity as the liquidator of the Firm ALLIANCE DEVELOPMENT

INNOVATIONS (ADI) -

in compensation for the damage suffered by the Company;

DISMISS the respondents' additional request for damage and interest, for abuse of procedure;

CONDEMN the Firm JEANTET, Mr. Jacques Michel BRISSON and Mr. BILLILOUD to:

PAY

Mr. AGUESSE Pierre and the lawyer Jean-Luc MAURAS, on one hand, and

PAY The companies SLYMAG SUPER U and CENTRAL REGIONAL SYSTEM U, on the other hand, a supplementary compensation of one thousand five hundred euros (1,500 euros) each, pursuant to Article 700 of the New Code of Civil Procedure;

CONDEMN them to:

PAY the expenses of the appeal, with the right to direct its collection in favor of the professional Civil Society (Société Civile Professionnelle Dutrievoz), and of the Professional Solicitors Civil Society (Société Civile Professionnelle JUNILLON-WICKY).

The first Registrar

Signature

The president

Signature

* * *

THIRD COURT LEVEL

COUR DE CASSATION

Public hearing on July 4th, 2006

Partial Revision

President: M. Tricot

Judgment No. 886 FS-P + R + B + I +R

Application for review: No. T 04-17. 397

Complete legal aid for the defense
Of the beneficiary Mr. AGUESSE;
Accepted by the Office of Legal aid of the Supreme Court
On February 22nd, 2005

REPUBLIC OF FRANCE **IN THE NAME OF REPUBLIC OF FRANCE**

SUPREME COURT « COUR DE CASSATION » COMMERCIAL, FINANCIAL AND ECONOMIC DIVISION/ CHAMBER

**RENDERED THE FOLLOWING JUDGMENT IN RULING
ON THE APPEAL (APPLICATION FOR REVIEW)**

LODGED BY:

- 1st Jeantet company, limited liability company, Headquarters. Address: 493 Courtois, 69390 Millery,
- 2nd Mr. Jacques Brisson, residing at 88 rue Charton, 69600,
- 3rd Mr. Michel Billioud , residing at 5, Petitees rue Colionges, 69230 Saint-Genis-Laval,

CONTESTING

**THE JUDGMENT RENDERED ON MAY 27TH, 2004,
BY THE COURT OF APPEAL OF LYON (CIVIL DIVISION, FIRST CHAMBER)**

**IN THE LITIGATION AGAINST THE FOLLOWING OPPONENTS -
DEFENDANTS TO THE SUPREME COURT:**

- 1st The Company Slymag Super U, limited liability Company, Headquarters address: 113 boulevard Yves Farge, 69007 Lyon,
- 2nd The Central East Regional U system, which is based 43 rue Eugène Ducretet, 68050 Mulhouse,
- 3rd Mr. Jean-Luc Moors, residing at 6 place Vierne, 44000 Nantes, taken as liquidator of Alliance Development Innovations (A.D.I.),
- 4th Mr. AGUESSE, residing at Feuillardes, 444450 Saint-Julien-de Concelles;

The plaintiffs submitted three pleas in support of their application for this appeal; the three pleas are appended to this judgment;

In View of the submissions received by the public prosecutor:

- **THE COURT'S COMPOSITION WAS IN CONFORMITY WITH ARTICLE L. 131-6-1 OF THE CODE OF JUDICIAL ORGANIZATION, IN ITS PUBLIC HEARING OF MAY 23rd, 2006; IN THE PRESENCE OF:** Mr. Tricot (president); Mr. Semeriva, (appointed reporting/ recording public auditor/Legal Adviser); Mr. Métivet, Mrs. Garnier, Trie, Collomp, Betch, Mr. Petit, Ms. Cohen-Branche, Mr. Jenny (Counselors); Ms. Gueguen, Beaudonnet, Mr. Truchot, Ms. Michel Arnsellern, Messrs. Pletton and Solomon, Ms. Maitrepierre (appointed public auditors/counselors) ; Madame Arnoux (Clerk of the Court's Chamber);
- **ON THE REPORT OF MR. SÉRNÉRIVA (APPOINTED PUBLIC AUDITOR/ LEGAL ADVISER) - THE COMMENTS AND THE CONCLUSIONS OF THE FOLLOWING LAWYERS/ COUNSELS WERE MADE AFTER DELIBERATION, IN CONFORMITY WITH THE LAW:** Comments of Mr. Bertrand (Jeantet firm and Messrs Brisson and Billioud's lawyer) ; Comments of SCP Thomas-Raquin and Bénabent (counsels of the firms Slymag Super U and East Central Regional U system); Comments of SCP Vuitton (Mr. AGUESSE's counsel); Conclusions of Mr. Jobard (General Counsel).

Whereas,

According to the contested judgment,

Messrs. Brisson and Billioud, title holders of a design model for a container used for recuperating used batteries, registered on July 31 1997 under number 97 4631, and the Firm Jeantet commercially exploiting this model, conducted a counterfeit seizure on October 10, 2001, at the Lyon firm operating a general merchandise and food store, and the Central East regional system U, then, took legal action against them for counterfeiting of this model;

Mr. AGUESSE intervened in the debates alongside the defendants, by asserting his creator's status, and soliciting annulment of the registration of the model under litigation, notably in view of the prior publication of a book / work entitled "Change the City";

ON THE FIRST PLEA

Given that,

The firm Jeantet, and Messrs. M. BRISSON and BILLIOUD object to the judgment which ruled.

That the model in question was null for lack of novelty,

Whereas according to their plea:

The new law has an immediate impact on legal situations arising prior to its entry into force, and not, after its definitive enactment. The provisions of the Act of July 25th, 2001 - having transposed into the French law the provisions of the Community Directive of October 13th, 1998, regarding legal protection of designs and models, and having amended Section 1 of Book V of the Code of intellectual property- is bound to have an application in assessing the validity of a model registered before entry into force of this Act.

By considering instead, that assessing the validity of the litigious model registered on July 31, 1997 was subject to the statutory provisions of July 14th, 1909, the court of Appeal, which concluded that a prior undisclosed art deprived this model of `novelty, had violated Article 2 of the Civil Code and L. 511-3 of the Code of intellectual property as amended by the order of July 25th, 2001;

However, whereas,

THE COURT OF APPEAL

RIGHTLY HELD that, the validity of the rights attached to a deposited model is determined as of the date on which this right was born,

AND

ACCURATELY EMPLOYED THE LAW applicable to that date; the new law only regulates acts of infringement committed after its entry into force;

- **THIS PLEA IS UNFOUNDED.**

ON THE SECOND PLEA

Given that, according to this plea:

The Plaintiffs are continuing to make the same objections in contesting the judgment under attack,

First,

That, no one can confer a title onto oneself;

That, the court of appeal violated the principle mentioned above, in conjunction with Article 1315, paragraph 2 of the civil Code, BY:

Relying on Mr. VILLEPOUX'S testimony as the basis in determining that the book entitled "Change the City", written by Mr. AGUESS and published by the LIBRAIRIE BLEUE, Constitutes an anteriority with a precise date going back to the year 1994, While

Noting that, he also handled Mr. AGUESSE's inventions file, from May to December of the same year, for editing the work authored by the latter,

From which,

It follows that Mr. VILLEPOUX did not constitute an independent third party of Mr. AGUESSE,

Second,

That, the Court of Appeal, after noting:

That Messrs. DUBOIS and BAUDINET'S attestations confirmed their knowledge of the book "Change the City", but did not provide any precise details of the various models being attributed to Mr. AGUESSE, such that these testimonies do not provide evidence that the model described in the work "Change the city" encompassed the characteristics of the model No. 974631,

And,

That the mail of October 29th, 1994, which Mr. M. BAUDINET sent to Mr. AGUESSE, only mentioned "drawings of new containers in the form of battery", from which it did not follow either that Mr. AGUESSE had, in 1994, already developed a model container encompassing all the features of Mr. BRISSON'S model;

It (The Court) cannot state the contrary without disregarding the scope of its own findings; in violation of Article 1315, paragraph 2 of the Civil Code.

Considering, however, that,

THE COURT OF APPEAL BASED itself on the material contained in the book "Change the City" published in 1994;

THIS PLEA ATTACKS superabundant reasons,

- **THIS PLEA CANNOT BE RECEIVED/ ALLOWED.**

ON THE THIRD PLEA, FIRST OBJECTION ONLY

Nevertheless,

In view of article 1382 of the civil code;

SINCE THE ADOPTED REASON for sentencing the firm Jeantet, Mr. BRISSON and Mr. BILLIOUD to pay damage and interest for abuse of procedure, is that, they could not ignore the status of Mr. AGUESSE;

SINCE THIS INAPPROPRIATE MOTIVE is being the determinant in characterizing an abuse of the right to sue,

And,

THE COURT OF APPEAL DID NOT PROVIDE a legal basis for its decision;

ON THESE GROUNDS, and without it being necessary to rule on the other objections of the third Plea:

- **QUASH AND CANCEL, BUT ONLY the sentence** rendered by the Court Of Appeal Of Lyon on May 27th 2004, which condemned the Company Jeantet, Mr. BRISSON, and Mr. BILLIOUD to pay damages and interest for abuse of procedure;

CONSEQUENTLY, ON THIS POINT

- **REMIT THE STATUS OF THE PARTIES** to that which existed prior to that verdict, and
- **RETURN THE CASE** to the COURT OF APPEAL OF LYON, in order to reformulate this point for it to be accepted.

FOLLOW UP TO THE JULY 4TH 2006 SUPREME COURT DECISION:

On July 7th 2006, SCP Jacques and Xavier VUITTON (the Law firm of the State Council and the Court of Cassation "Supreme Court"), issued a written notice to Mr. Alain LECLERC (the Plaintiffs' lawyer), reminding him that execution of the Supreme Court's dismissal of the appeal must be completed within four months of the date of serving the said Judgment, or in any event, it must be completed within two years of the delivery of this decision, even in the absence of such notification.