



L'Oréal vs Bellure NV

Motion to Appeal to the Supreme Tribunal

On June 13th, 2006, in the case L'Oréal vs Bellure NV, the “Cour de Cassation”, France’s supreme tribunal, reversed a judgment by the Paris Court of Appeal granting copyright on perfumes as if these were an original work of art (or literature), i.e. a work of the mind.

Anyone familiarized with the basic principles of intellectual property would expect such a ruling. Indeed, upon taking cognizance of the Paris Court of Appeal’s decision (*January 25th, 2006*) in favour of L'Oréal’s alleged copyright on its fragrances, the highest tribunal of France had no alternative but to infirm this decision and enforce the rules governing authorship and the resulting copyright. Interestingly, courts worldwide have recently leaned in favour of copyright instead of supporting commercial privileges, e.g. utility and design patent. Nevertheless, the courts often confuse the exclusive right to produce a work of the mind with the source of such a right (*i.e. the true intellectual property of one’s creative work of art or literature*). This explains why the Cour de Cassation, faced with such a jurisprudential trend, corrected the situation by stating a universal principle: copyright can only result from a literary and/or artistic original work, and not (*never!*) from a mere technical know-how or savvy.

In the light of this jurisprudence, one must conclude that without a tangible and undeniable proof of anteriority, which only a work of the mind can provide, the originator of an innovative concept or product cannot claim the paternity of his creation and the ensuing copyright. On many occasions, Michel Dubois has repeated this basic principle. While dealing a serious blow to L'Oréal, the supreme court of France definitively confirmed the need to acquire the intellectual property of innovative ideas by putting them into concrete form onto some physical medium (*i.e. literary and/or artistic*), prior to disclosing them to anyone. Otherwise, predatory enterprises and individuals will continue copying and commercializing such ideas with impunity. As an affordable and strategic means of establishing one’s intellectual property, the Intellectual Passport CB plays an essential role in ensuring greater justice and equity. Doubtless, the industry of cosmetics would benefit from such a product!

François Belleau

“In a judgment rendered on June 13th, 2006, the *Cour de cassation* dismissed a motion for permission to appeal which claimed that a company’s fragrance could be protected by copyright, on condition of being original.

According to the Court, ‘a fragrance resulting from a mere technical know-how cannot be considered as the creation of an expression which could enjoy the protection of a work of the mind, hence of copyright’.

The Court therefore overturns the judgment of the Paris Court of appeal, dated January 25th, 2006 (*CA Paris, 4^e ch. A, January 2006, Bellure vs L’Oréal: [The Legal Weekly for Enterprises and Business, March 9th, 2006, 1386]*) which seemed to grant copyright’s protection to perfumes as per article L-112-2 of the Code of Intellectual Property.”