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Supreme Court of Italy (Corte di Cassazione), June 2, 1999, n. 5388, Saatchi v. Heirs of Pietro Mascagni (published in Italian in AIDA VII-1998)

Moral right – advertisement – operatic work -

It is not unusual that the usage of pre-existing artistic works in advertising films or messages raises criticisms because of the peculiar mix between commercial purposes and cultural values. Several cases submitted to the Italian Courts concern cases of musical works in advertisements. The settlement of the cases out of Court is nonetheless quite common.

The heirs of Pietro Mascagni sued the advertising agency Saatchi for the unauthorized usage of the composition "La barcarola" from the Opera "Silvano" for the production of a tv ad for "puree Knorr". The Court of Rome rejected the claim, stating that the solid and wide author's reputation could not be affected by the short advertisement; the judge observed that it might – at the most - only affect the opinion that the public may have about Mascagni's heir and their interest in the economic exploitation of the musical works they had inherited. The Court of Appeal of Rome reversed the first decision recognized the violation of both the reproduction right and the moral right in the work, the Supreme Court was called to examine the case.

Art. 20 of the Italian Copyright Law April 22, 1941 n. 633 grants the author the right to authorship and integrity on his/her intellectual works. After the author's death, the moral right is transferred according to mandatory rules separately from economic rights. Pursuant to art. 23, it belongs to the the author's close family members (spouse, children or parents and - when there are none - other relatives) to exercise the moral right. Where it subsists a public interest to the defense of moral rights, they can be exercised by the Government.

In its decision n. 5388/1999 the Supreme Court recognized the violation of the exploitation right for the unauthorized reproduction of the composition, but rejected the assertion of the Court of Appeal that in any circumstance the unauthorized usage of a composition from an opera in advertisement music sound track constitutes an infringement of the author's moral right.

The commercial nature and purpose and the short structure of the ad do not automatically imply a damage for the honour and reputation of the composer or the violation of the cultural integrity of the work. In fact, it is not correct to presume that in all cases an advertising short film has no specific expressive value . The decision of the Supreme Court goes on stating that the negative effect of the advertising usage cannot be taken for granted, since in some cases it can produce even a valorization of the music.

The infringement of the moral right must be verified concretely in relation to the usage at issue, taking into account the various elements that characterize the advertisement itself, like the advertised product and the ad content, presentation and style; above all, it must be examined how the music work is inserted in the framework of all such elements.

The case was therefore sent to a different section of the Court of Appeal for a new judgement on the merits.