



**QORTI TA' L-APPELL**

**S.T.O. PRIM IMHALLEF  
VINCENT DE GAETANO**

**ONOR. IMHALLEF  
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**ONOR. IMHALLEF  
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Seduta tal-31 ta' Lulju, 2003

Appell Civili Numru. 1852/1995/1

**General Soft Drinks Company Limited  
vs  
Portanier Bros. Limited**

**Il-Qorti;**

Dan hu appell minn sentenza moghtija mill-Prim Awla tal-Qorti Civili fis-16 ta' Frar, 2002 fl-ismijiet premissi.

Fic-citazzjoni taghha is-socjeta` attrici ippremettiet:

**Illi hija l-proprjetarja tad-drittijiet tal-awtur fuq il-  
“graphics” annessi mac-citazzjoni u mmarkati Dok. A;**

**Illi hija ricentement ghamlet kampanja ta' reklamar bl-uzu ta' dawn il-“graphics”;**

**Illi s-socjeta` intimata [recte: konvenuta] recentement bdiet kampanja ta' pubblicita` bl-uzu ta' “graphics” kwazi identici u in partikolari il-kliem u n-numri “Buy 5 + Get 1 Free”, kif jidher mid-dokument anness u mmarkat Dok B li hu kopja tal-“graphics” uzati mis-socjeta` intimata;**

**Illi l-agir tas-socjeta` intimata jikkostitwixxi ksur tad-dritt tal-awtur tas-socjeta` attrici, kif provvdut fil-Kap. 196 tal-Ligijiet ta' Malta;**

**Illi b'digriet moghti mill-Prim Awla fit-3 ta' Novembru, 1995 is-socjeta` konvenuta giet provvizorjament inbita milli tkompli tirreklama bl-uzu tal-“graphics” li jidhru fid-Dok. B;**

Premess dan, is-socjeta` attrici talbet lis-socjeta` konvenuta tghid ghaliex ma kellhiex dik il-Qorti:

**1. Tiddikjara illi l-graphics uzati mis-socjeta` konvenuta kif jidhru f'Dok. B jikkostitwixxu ksur tad-dritt ta' l-awtur tas-socjeta` attrici peress li jixbhu hafna u huma kwazi identici ghal dawg tas-socjeta` attrici kif jidhru fid-Dok. A;**

**2. Tinibixxi lis-socjeta` konvenuta milli tkompli tirreklama bl-uzu tal-“graphics” li jidhru fid-Dok. B; u**

**3. Tikkundanna lis-socjeta` konvenuta sabiex thallas lis-socjeta` attrici is-somma ta' hames mitt lira Maltin (LM500), jew somma ohra verjuri, bhala penali a tenur tal-Artikolu 13(3) tal-Kap. 196 tal-Ligijiet ta' Malta;**

**Bl-ispejjez u bl-imghax skond il-ligi.**

Ghal dan, is-socjeta` Portanier Bros. Limited wiegbet hekk:

1. Illi t-talba tas-socjeta` attrici hija manifestament infondata ghax la hemm *copyright* fl-offerti li l-kumpanija tista` taghmel biex thajjar lill-konsumatur jixtri l-prodott taghha, u lanqas ma hemm *copyright* fl-uzu tan-numri.

2. Illi barra minn dan, fil-kaz partikolari, l-*ensemble* taz-zewg "graphics" huma totalment differenti u ma jistax jinghad li hemm ikkopjar tal-mod kif l-idea giet manifesta mis-socjeta` attrici. Zgur li ma jistax ikun hemm, fi kliem il-ligi, "tahwid" bejn iz-zewg reklami.

3. Illi, minghajr pregudizzju ghall-premess, ghandu jigi rilevat illi l-idea ta' offerta ta' flixkun b'xejn ma' kull xiri ta' numru ta' fliexken tal-istess socjeta` kienet giet introdotta fis-suq mill-esponenti <sup>1</sup> qabel is-socjeta` attrici, u r-reklam taghha (anke fil-*get up* u fil-posizzjoni tal-kliem "Buy", "Get" u "Free") kien jixbah hafna dak li kienu qed juzaw l-esponenti dan l-ahhar, u ghalhekk, l-esponenti ma jistghux jigu akkuzati li kkopjaw idea tas-socjeta` attrici, meta kienu huma li hargu l-ewwel bl-idea u bil-manifest taghha.

Bis-sentenza taghha tas-16 ta' Frar, 2000 il-Prim Awla tal-Qorti Civili laqghet it-talbiet tas-socjeta` attrici, bl-ispejjez u bl-imghax mid-data tas-sentenza sal-effettiv pagament kontra s-socjeta` konvenuta, b'dan li kwantu ghat-tielet talba dik il-Qorti kkundannat lis-socjeta` konvenuta thallas is-somma ta' hames mitt lira lis-socjeta` attrici, u dan wara li dik il-Qorti kkunsidrat is-segwent:

Illi s-socjeta` konvenuta resqet diversi eccezzjonijiet inkluzi li tali offerti ma humiex suggetti ghal protezzjoni skond il-ligi tal-*copyright*, illi l-*ensemble* taz-zewg *graphics* huwa kompletament distint minn xulxin b'mod li ma hemmx tahwid bejn iz-zewg reklami; illi l-idea tal-offerta b'xejn ma' kull xirja ta' numru ta' fliexken kienet giet

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<sup>1</sup> Dok. X anness man-nota ta' eccezzjonijiet.

introdotta mis-socjeta` konvenuta kif jirrizulta minn kopja tar-reklam li gie esebit mill-istess socjeta` konvenuta a fol. 17 tal-process, esebit bhala Dok. "X".

Illi dwar l-istess **Ian Mizzi** ghas-socjeta` attrici xehed fid-9 ta' Dicembru 1996, illi tali *graphics* gew uzati minnhom l-ewwel darba fl-ahhar tas-sena 1994 u fis-sena 1995, u sabiex saru tali *graphics* gie mqabbad *graphic designer* ; wara s-socjeta` konvenuta harget riklami bi *graphics* ferm simili ghal dawk uzati mis-socjeta` attrici, u l-oggezzjoni tas-socjeta` attrici ma hijiex rigwardanti l-offerta li jinghata fl-ixkun b'xejn ma hamsa, izda dwar il-mod li saru l-istess *graphics* li huma simili hafna ghal dawk uzati mis-socjeta` attrici a fol. 5 tal-process. Illi l-istess xhud sostna li dwar ir-riklam utilizzat mis-socjeta` konvenuta ma ghandhu ebda lment *stante* li ma jixbahx il-*graphic* li fuqha saret din l-kawza.

Illi xehed ukoll **George Portanier** ghan-nom tas-socjeta` konvenuta fit-23 ta' Gunju 1997 (fol. 28 sa fol. 31) fejn sostna li hargu riklam mertu tal-kawza odjerna xi sentejn qabel, u sabiex ghamlu dan ix-xhud avvicina lill-Alan Meadows, agent tal-rikliamar tal-istess socjeta` u qallu li xtaq jaghmel reklam tal-5 + 1, u dan lesta l-prova u stampaw dawn *ix-shelf talkers*. Illi sostna li tali skeda kienet giet uzata minnhom fi snin ta' qabel meta offerti simili bhala *Three bottles One Free* gew uzati mal-prodotti taghhom bhal *Miranda*. Ikkonferma ukoll li l-*get up* a fol. 17 tal-process giet uzata minnhom fis-16 ta' Lulju 1994.

Illi in kontro-ezami sostna illi kien jaf bir-reklam tas-socjeta` attrici u kien rah, u zamm kopja wahda tal-istess reklam. Kienu l-ewwel hargu r-reklami tal-Kimara u tal-Miranda, u wara hareg tas-socjeta` attrici u mbaghad hareg ir-reklam tas-socjeta` konvenuta, li fuqhu saret din l-kawza. L-istess xhud sostna illi la darba qeghdin fis-suq ghall-kompetizzjoni kulhadd jista' juza' l-kliem "*Buy Get 2 Free*" kif kienu uzawh huma.

Illi xehed ukoll **Alan Meadows** fis-27 ta' Ottubru 1997 (fol. 36 sa fol. 39) li sostna li kien inkarigat mis-socjeta` konvenuta sabiex taghti kaxxa ma' hamsa, u l-idea tan-

numri “5 + 1” u l-“*Get-Up*” kienet ta' artist tal-istudio tieghu Louis Scerri, u qabel din kellhom l-idea tat-“2 + 1” u “3 + 1”, u sostna li ma jidhirlux li ikkopja minghand xi ditta ohra. Illi dwar l-*artwork* dan thalla f'idejn l-artist u dan ghaliex dan ikollhu “*l-idejat kreattivi tieghu*”.

Illi fl-ahharnett xehed ukoll **Louis Scerri** fid-9 ta' Jannar 1998 (fol. 44 sa fol. 49) li sostna li biex giethu l-idea tal-“*Buy 2 and Get 1 Free*”<sup>1</sup> huwa ha t-test minghand Meadows u huwa qassam l-idea bhala *designer*, u allura l-ideja ta' kif qassam il-fliexken u l-*compisition* taghhom ghamilhom hu, u ghalhekk bhala “*design hija idea originali tieghu*”. Illi kkonferma li d-Dok. B a fol. 6 tal-process gie disinjat minnu wkoll, u id-Dok. A rah wara li lesta tieghu, ghalkemm ma kienx cert jekk rahx qabel jew wara li lesta tieghu, pero' ma ghamel l-ebda riferenza ghalih waqt li kien qed jaghmel ix-xoghol tieghu. Huwa sostna li qabel ma jaghmel disinn huwa jara t-*trend* ta' kumpaniji ohra, pero' jaghmel id-disinn huwa.

Illi l-ewwel li jrid jigi deciz huwa jekk il-*graphic* “*Buy 5 + 1 Free*” huwiex regolat mill-ligi li tipprotegi d-drittijiet tal-awtur u cioe` skond il-**Kap 196 tal-Ligijet ta' Malta**.

Illi fl-ewwel lok trid issir distinzjoni bejn in-natura tal-offerta tas-socjetajiet tal-kontendenti li t-tnejn irrekklamaw li ma kull hames fliexken tal-litru mixtrija mill-prodotti taghhom jinghata fliexkun tal-litru b'xejn, u l-grafika uzata sabiex tigi reklamata l-istess offerta.

Illi in effetti jirrizulta mill-provi u senjatament mid-Dok. A a fol. 5 tal-process, li d-disinn uzat sabiex tigi trasmessa din l-offerta u idea bil-kliem “*Buy 5 + Get 1 Free*” hija fil-fatt “*disinn*” u bhala tali hija protteta taht id-disposizzjonijiet tal-**Artikolu 2 tal-Kap 196** fejn hemm id-definizzjoni ta' “*xoghol artistiku*”, u din il-Qorti hija tal-opinjoni li tali xoghol ghandhu l-elementi kollha necessarji sabiex tali disinn illum *in disamina*, jigi protett taht id-disposizzjonijiet tal-**Artikolu 3 (2) tal-Kap 196**.

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<sup>1</sup>Ghalkemm l-ewwel Qorti hawnhekk qed tirriproduci fedelment il-mistoqsija li saret lix-xhud Scerri mill-Avukat tas-socjeta` konvenuta, hu evidenti li r-referenza kellha tkun ghal “*Buy 5 and Get 1 Free*” u mhux “*Buy 2 and Get 1 Free*”

Illi dan qed jinghad peress li tali disinn tal-kliem u n-numri relattivi konsistenti senjatament fid-dicitura “*Buy 5 + Get 1 Free*”, kif impustati fl-assjem taghhom ghandhom il-konnotati necessarji kollha sabiex jigu prottetti bhala d-drittijiet tal-awtur, skond l-**Artikolu 3 tal-Kap 196** peress li sabiex sar l-istess xoghol “*intagħmel sforz bizzejjed fl-ghemil tax-xoghol biex jinghatalu karattru originali*” u in effetti “*x-xoghol inkiteb, gie registrat jew xort’ohra moghti forma materjali*”.

Illi dan ifisser li x-xoghol irid jorigina mill-awtur tieghu u ma jigix ikkuppjat min xoghol iehor b’dan li **J. Petterson** fil-kawza “**University of London Press vs University Tutorial Press**” sostna illi:-

*“The word ‘original’ does not mean in this connection that the work must be the expression of original or inventive thought ..... The originality which is required relates to the expression of the thought.”*

Illi ghalkemm is-socjeta` konvenuta sostniet li tali disinn u partikolarment in-numri u l-kliem gia kienu intuzaw minnha diversi drabi, u senjatament fis-16 ta’ Lulju 1994 u allura forsi qed timplika li allura ma hemm ebda originalita` fl-istess disinn, l-istess socjeta` attrici naqset li tipprova dan, anke peress li l-grafika uzata fir-reklam taghha esebit minnha bhala Dok. X a fol. 17 tal-process, huwa ferm differenti min dak mertu tal-kawza odjerna u esebit bhala Dok. “A” a fol. 5 tal-process, u dan kemm f’dak li huwa kliem uzat kif ukoll ghall-mod kif l-istess kliem u numri gew disinjati u mposti fuq ir-reklam intier. Illi in effetti bejn id-Dok. X u d-Dok. A hemm biss kuntrast u distinzjoni cara, tant li iz-zewg disinji u l-grafika hija ghal kollox differenti minn xulxin, tant li s-socjeta` attrici sostniet illi dwar l-istess Dok. “X” la kellha u lanqas ghandha ebda oggezzjoni.

Illi pero` s-sitwazzjoni hija differenti meta wiehed iqabbel id-Dok. “A” mad-Dok. “B” u cioe` il-grafika uzata mis-socjeta` konvenuta fir-reklam taghha tas-27 ta’ Dicembru 1995, stante li l-kliem u n-numri “*Buy 5 + Get 1 Free*”, bil-

mod kif riprodotti u stampati huma kwazi simili għall-kollox, tant li diffiċli jingħad li biex sar ir-reklam tas-socjeta` konvenuta ma kienx hemm riferiment għall-grafika uzata fir-reklam tas-socjeta` attrici, għaliex jikkonsistu f'riproduzzjoni materjali tal-istess ideja artistika, u ppresentata f'xogħol artistiku kwazi identiku, kemm bil-mod kif gew magħmula n-numri u l-imposizzjoni tal-kliem fuq l-istess numri komponenti l-klawsola fuq indikata.

Illi huwa ironiku li dak li s-socjeta` konvenuta qed issejjah bhala xogħol la artistiku u wisq inqas originali, u għalhekk bhala tali mhux suggett għall-protezzjoni taht il-ligi tad-drittijiet tal-awtur, hija spiccat sabiex għamlet kwazi ezatt bhalu, u għal dan l-iskop inkarigat disinjatur, li qed isostni li x-xogħol kollhu kien f'dak li huwa disinn, kien tiegħu u originali, għalkemm ix-xhieda kollha tal-istess socjeta` konvenuta, nkluzi George Portanier, Andrew Meadows, u Louis Scerri kollha sostnew li qabel ma għamlu r-reklam tagħhom, kienu jafu u raw l-istess reklam bil-mod kif ippublikat tas-socjeta` attrici.

Illi fl-opinjoni ta' din il-Qorti, huwa inutili li wiehed jsostni li d-disinn u l-grafika tas-socjeta` konvenuta hija differenti minn dik uzata mis-socjeta` attrici, *stante* li meta tikkompara l-istess grafika ma' xulxin, jirrizulta li "*Buy 5 + Get 1*" huma formolati b'mod identiku, u l-kelma "*Free*" fid-disinn tas-socjeta` konvenuta qegħda fuq in-numru "1" mentri tas-socjeta` attrici hija hdejn in-numru "1".

Illi x-xhieda kollha prodotti mis-socjeta` konvenuta lkoll qalu li kienu jafu u raw l-istess grafika tas-socjeta` attrici, tant li anke zammew kopja tal-istess fil-file tagħhom, u din hija wkoll ammissjoni *da parte* tal-istess socjeta` konvenuta, li hija kienet taf u kienet konxja li s-socjeta` konvenuta, kienet ġia uzat l-istess grafika u disinn biex tmexxi 'l quddiem il-kampanja għall-offerta tagħha.

Illi għalkemm is-socjeta` konvenuta sostniet illi l-grafika tagħha originat minn idea tal-artist minnha inkarigat, din il-Qorti jidhrilha li z-zewg disinji tal-partijiet huma tant simili, li ma huwiex possibbli li d-disinn tas-socjeta` konvenuta sar mingħajr referenza għad-disinn *di piu'* ġia ffurmat u

ppublikat tas-socjeta` attrici, tant li gie ritenut illi: *“although the plaintiff may well not be able to prove that an actual copying took place, he can show the court that his work and the defendant’s work are identical and leave it to an embarrassed defendant to explain how his work and the plaintiff’s turned out to be the same. If the plaintiff’s work was made and published prior to the defendant’s, and is not commonplace, actual infringement is a natural inference even if copying cannot be proved”* (**Jeremy Phillips - Alison Firth - “Introduction to Intellectual Property Law” page 173**). Illi fil-fatt jinghad ukoll li *“anything that is worth copying, is worth protecting under the laws of copyright”*.

- omissis -

Illi a skop ta' kjarezza jinghad illi dak li qed jigi protett ma huwiex ir-reklam fih innifsu, izda x-xoghol u d-disinn partikolari fl-imposizzjoni tal-kliem *“Buy 5 + Get 1 Free”* u f'dan il-kuntest huwa rilevanti dak li sostna l-abbli difensur tas-socjeta` attrici fin-Nota tal-Osservazzjonijiet tieghu fejn ikkwotata lill **Michael F. Flit** fil-ktieb tieghu *“A User’s Guide to Copyright”* li jsostni illi:

*“The Courts have been reluctant to accord copyright protection to advertisements but the position now is quite clear. Subject to the normal requirement of any other work, which is entitled to copyright protection, the fact that the work is an advertisement, does not detract from its right to protection, under the copyright act; a poster is therefore an artistic work, as regards its work, and a literary work as regards the words and numbers appearing hereon”*.

Illi ghalhekk a bazi tal-premess, it-talbiet attrici ghandhom jigu milqugha”.

Is-socjeta` konvenuta hassitha aggravat b'din is-sentenza u interponiet appell minnha permezz ta' rikors in data 24



ta' Frar, 2000. L-aggravji tas-socjeta` konvenuta jistghu jigu riassunti hekk:

1. Kienet is-socjeta` konvenuta li l-ewwel darba li "immanifestat l-idea ta' fliexken b'xejn ma' kull fliexkun mixtri, u fir-reklam taghha<sup>3</sup> uzat l-istess kliem u set-up li d-ditta attrici qed tippretendi li ghandha l-*copyright* fuqhom". Skond is-socjeta` appellanti, "id-differenza bejn iz-zewg reklami mhux daqshekk kbira kif poggietha l-ewwel Onorabli Qorti, u l-fatt li s-socjeta` attrici caqilqet xi numru u biddlet il-posizzjoni ta' xi kliem ma jinnewtralizzax il-fatt li ma kien hemm xejn gdid fir-reklam tas-socjeta` attrici."

2. Ir-reklam tas-socjeta` konvenuta min iddisinjah wasal ghalih "by an independent process" u ma kienx hemm, ghalhekk, l-element tal-ikkupjar li huwa mehtieg biex ikun hemm ksur tad-drittijiet tal-awtur.

3. Il-*graphics* fir-reklam tad-ditta attrici ma fih xejn "li jista' jinghad li hu *of a complicated nature and could not have come into existence except by the application of skill and labour*...biex b'hekk wiehed jista' jgawdi minn *copyright*". Skond is-socjeta` appellanti "slogans u reklami ohra huma uzati kontinwament fis-suq, izda mhux kull idea haqqa *copyright* jekk, biex nuzaw espressjoni maltija, ma jkun hemm xejn specjali kif dik l-idea tohrog fis-suq"; u "fi kliem iehor, hemm biss [fil-*graphics* tas-socjeta` attrici appellata] ir-raw *material* impoggija f'linja biex tingara mill-konsumatur, kif inhu normali li jsir u kif wiehed jara ta' kulljum fil-hwienet".

Qabel ma' din il-Qorti tghaddi biex tezamina dawn it-tlett aggravji *seriatim*, tajjeb li jigu ccarati l-principji legali involuti f'din il-kawza, kif ukoll punt preliminari dovut ghall-fatt li mid-data li gie intavolat l-appell sal-lum il-ligi taghna dwar il-*Copyright* inbidlet. In fatti, il-ligi vigenti hija illum il-Kap. 415 li l-parti l-kbira taghha giet fis-sehh fl-14 ta' Awissu, 2000, cioe` mhux biss wara li kienet bdiet din il-kawza izda anke wara li gie intavolat ir-rikors ta' appell.

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<sup>3</sup> Kopha Dok. X, fol. 17, annessa man-nota ta' eccezzjonijiet.

Din il-Qorti ezaminat id-disposizzjonijiet transitorji kontenuti fl-Artikolu 60 tal-Kap. 415 u hi tal-fehma li, galadarba ma hemm ebda disposizzjoni li specifikament tirregola dak li ghandu jigri f'sitwazzjoni bhal dik in dizamina – cioe` meta kawza tkun inbdiet taht il-ligi l-antika, u tkun giet deciza u anke appellata taht dik il-ligi l-antika – l-appell ghandu jigi determinat b'referenza ghal dik il-ligi l-antika li kienet tirregola d-drittijiet tal-partijiet fiz-zmien tal-ksur allegat mis-socjeta` attrici u kontestat mis-socjeta` konvenuta, cioe` b'referenza ghall-Kap. 196. Jigi precizat ukoll li anke l-abbili difensuri tal-partijiet, meta ttrattaw l-appell quddiem din il-Qorti kif issa komposta fit-28 ta' Ottubru, 2002, dejjem ghamlu referenza biss ghad-disposizzjonijiet tal-Kap. 196. Fi kwalunkwe kaz il-principji bazici ghal dak li jirrigwarda id-drittijiet ta' l-awtur b'referenza ghal *graphics* jew disinji bhal dawk li huma meritu ta' din il-kawza baqghu sostanzjalment l-istess.

Il-ligi tal-*copyright* ma tipproteggix l-ideat *ut sic*, izda tipprotegi l-manifestazzjoni taghhom b'xi wiehed jew aktar mill-modi imsemmija fl-Artikolu 3(1) tal-Kap. 196. Biex xoghol artistiku jkun jista' jgawdi minn din il-protezzjoni irid ikun, *inter alia*, sar "sforz bizzejjed fl-ghemil tax-xoghol biex jinghatalu karattru originali" (Art. 3(2)(a)). Kif tajjeb jinghad f' **Copinger & Skone James on Copyright**<sup>4</sup>:

**Copyright protection is given to literary, dramatic, musical and artistic works and not to ideas, and therefore it is original skill or labour in execution of the work, and not originality of thought, which is required. The word "original" does not, in this connection, mean that the work must be the expression of original or inventive thought; the originality required relates to the expression of the thought. (para. 3-27).**

X'inhu l-grad ta' "sforz" li jrid ikun hemm biex wiehed jista' jittellem dwar "karattru originali"? Hawnhekk wiehed irid necessarjament jorbot mad-definizzjoni ta' "xoghol

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<sup>4</sup> Sweet & Maxwell, 13<sup>th</sup> ed.

artistiku” moghtija fl-Artikolu 2(1) tal-Kap. 196, fejn il-“kwalita` artistika” tax-xoghol hija espressament eskluza mill-istess definizzjoni<sup>5</sup>. L-eskluzjoni mill-ekwazjoni tal-kwalita` artistika tax-xoghol tfisser li l-“isforz” mehtieg biex ikollok “xoghol artistiku” originali huwa pjuttost wiehed baxx. Kif jinghad fit-tieni edizzjoni ta' **Intellectual Property** ta' W. R. Cornish:

**The requisite “skill, judgment and labour” is thus affected by the meaning of the various types of work and by the fact that only category (a) secures copyright “irrespective of artistic quality”. In the first category [irrespective of artistic quality, a graphic work, photograph, sculpture or collage], most of the decisions set the minimum level of effort low: a simple drawing of a human hand showing voters where to mark their cross on a voting card, the label design for a sweet tin, the arrangement of a few decorative lines on a parcel label, have all been accorded copyright. (para. 10-010).**

U f'**Copinger and Skone Jones on Copyright** (gja msemmi) jinghad hekk:

**It is clear that the standard of originality required by the Copyright Acts is a low one, but it is almost impossible to define in any precise terms the amount of knowledge, labour, judgment or literary skill or taste which the author of a work must bestow on its composition in order for it to acquire copyright. It is here that the real difficulty lies. There is no guiding principle as to the quantum of skill and judgment required. Simplicity, as such, is not enough to prevent copyright subsisting unless extreme, such as a straight line, or a circle. (para. 3-32).**

Meta, pero`, hu evidenti li l-ammont ta' sforz maghmul biex jinholoq ix-xoghol artistiku huwa minimu, ikun hemm

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<sup>5</sup> 2(1)... “Xoghol artistiku” tfisser, irrispettivament mill-kwalita` artistika, kull wiehed minn dawn li gejjin, jew xogholijiet simili ghalihom...pitturi, disinji...”.

generalment ksur tal-*copyright* biss jekk ikun hemm ikkupjar sostanzjali tax-xoghol originali:

**If the plaintiff's labour, skill and judgment have only been just enough to earn him copyright, infringement may arise only where there is exact imitation of such features as are of some individuality. In *Kenrick v. Lawrence* (1890) 25 Q.B.D. 99, the plaintiff claimed copyright in a simple drawing of a hand, made with the intention of showing voters where to register their vote on a ballot form. But it was held that only an exact copy of the drawing would infringe, if the plaintiff were not to be conceded a monopoly in drawing of hands for this and other purposes. Through this consideration also the court is able to take account of the merit overall of the plaintiff's work.**<sup>6</sup>

Kwantu ghal dak li huwa ikkupjar, huwa veru li tnejn minn nies jistghu jaslu indipendentement minn xulxin biex jiproducu l-istess bicca xoghol artistika, li tista' tkun addirittura identika. Izda:

**If the evidence shows that there are striking similarities between the two works, that the plaintiff's was the earlier in time and that the defendant had the opportunity to get to know the plaintiff's work, then a court may well find copying proved in the absence of any convincing explanation to the contrary by the defendant.**<sup>7</sup>

**If the claimant's work was made and published prior to the defendant's, and is not of a commonplace nature, infringement is a natural inference even if copying cannot be proved. The same is true where copying is partial; complete identity between the taking and the relevant part of the original will provide a strong inference of copying. In order to establish infringement it will only be necessary to establish that**

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<sup>6</sup> W.R. Cornish, *Intellectual Property op. cit.* Para. 11-012.

<sup>7</sup> *Ibid.* para. 11-003

**the part taken is a substantial part of the original, in quality as well as quantity.**<sup>8</sup>

Stabbiliti dawn il-principji generali, din il-Qorti ser tghaddi issa biex tezamina l-aggravji tas-socjeta` konvenuta appellanti. Kwantu ghall-ewwel aggravju, huwa veru li gja f'Lulju ta' l-1994 is-socjeta` konvenuta kienet harget b'reklam fejn kien jinghad – b'referenza ghax-xarba bl-isem Kimara – “Buy any 2 1litre bottles of Kimara or Diet Kimara & Get one Kimara or Diet Kimara 300ml Bottle Free”. Din il-Qorti, pero`, bhall-ewwel Qorti, ma tara assolutament ebda xebh bejn il-grafika fid-Dok. X u dik fid-Dok. A. Il-*get-up*, cioe` dak l-assjem ta' elementi li joholqu *visual impact*, huwa kompletament differenti. L-uniku xebh jinsab fl-uzu ta' certu kliem – “Buy”, “Get” u “Free” – izda fuq dawn il-kliem *per se* certament ma hemmx *copyright*. Ghalhekk bl-ebda mod ma jista' jinghad li kienet is-socjeta` attrici li kkupjat lis-socjeta` konvenuta fl-uzu ta' xi grafika partikolari.

Kwantu ghat-tielet aggravju, din il-Qorti hi tal-fehma li ghalkemm il-grafika wzata mis-socjeta` attrici (ara Dok. A) hija wahda relattivemant semplici – grafika li setghet facilment tinholq bl-uzu ta' certi programmi li jintuzaw fil-*computers* – il-*get-up* fl-assjem tieghu jipprezenta certa` originalita` f'dik li hija speccjalment l-impostazzjoni tal-figuri “5 + 1”. Huma infatti dawn il-figuri, u mhux tant il-kliem “Buy”, “Get” u “Free”, li jaghtu impatt vizwali originali lil din il-grafika. Ghalhekk din il-Qorti ma tistax taqbel mas-socjeta` appellanti meta din tikkontendi li hawnhekk ma hawnx xoghol artistiku li jgawdi mid-drittijiet ta' l-awtur taht il-Kap. 196.

Fl-ahharnett, kwantu ghat-tieni aggravju, u cioe` li ma kienx hemm l-element ta' l-ikkupjar, din il-Qorti, wara li ezaminat bir-reqqa d-deposizzjoni tax-xhud Louis Scerri, hi tal-fehma li m'ghandhiex tiddisturba l-konkluzzjoni li waslet ghaliha l-ewwel Qorti f'dan ir-rigward. Huwa evidenti li dana x-xhud kien a konoxxjenza tal-grafika tas-

<sup>8</sup> Phillips J. and Firth A., *Introduction to Intellectual Property Law* Butterworths, 4<sup>th</sup> ed., para. 13.8, p. 179.

## Kopja Informali ta' Sentenza

socjeta` attrici, u jidher li dak li ghamel kien li biddel xi affarijiet – bhal, per ezempju, il-kulur tal- “+” u l-kulur u l-*fonts* tal-kliem “Buy”, “Get” u “Free” – izda zamm bazikament dak li kien l-essenza tal-grafika tas-socjeta` attrici billi rriproduca l-figuri “5 + 1” bl-istess impatt vizwali tista' tghid identiku. It-tibdil, zghir, li kien hemm ma kienx, fil-fehma ta' din il-Qorti, bizzejjed biex jista' jinghad li ma kienx hemm ikkupjar tad-disinn tas-socjeta` attrici.

Ghall-motivi premessi, tichad l-appell tas-socjeta` konvenuta, bl-ispejjez kontra taghha, u tikkonferma s-sentenza appellata.

### < Sentenza Finali >

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