

Kluwer Trademark Blog

Using the inspiration of a moodboard is not copying

Casey Joly (ipSO) · Wednesday, February 10th, 2021

Famous young pop singer, **Aya Nakamura** has sold millions of albums and made a name for herself in France and Europe-wide. Recently, her accomplishments extended to the IP field as well when Kyo Jino, a fashion designer accused Aya on social media of “stealing her creativity” to which Aya responded: “If what you say is true, then sue me and we’ll see”.

Here are the facts [Paris Judiciary Court, [15/01/2021 hot out] :

- Kyo sent Aya a moodboard, with a certain number of clothing outfits and atmospheres in December 2018, further to which a photo shooting was organized. The parties never clinched a deal after this (and seemingly, there was no recorded agreement) but Kyo Jino did communicate abundantly on social media on the meet-up.
- Aya aired her new “Pookie” clip on 10th April 2019 with a series of outfits that Kyo believed were directly inspired by his mood board. There were heated exchanges on social media further to which Kyo sent a warning letter to Warner Music France, Aya’s producer, requesting some 50.000€ in compensation. When Aya was sued, social and traditional media relayed the accusations profusely.

When you get down to the nitty gritty, for Kyo, 3 outfits used in the clip would prove that Aya had used his work and that that use would constitute unfair use of the economic value of his moodboard :

? use of a white dress inspired by the same esthetical atmosphere (sitting behind a desk): the Court disagreed, Aya used a fine white dress with a V-neckline different to the thick white, buttoned-up outfit with lavalliere collared blouse proposed by Kyo;

? use of a yellow dress: for the Court, Aya used a neon yellow dress, fluid but hugging in a wraparound form, with a slit on the right all the way up to the thigh, while Kyo’s proposal was of a pale yellow formal dress with a low flared neckline and slit in the center but only knee-length; and

? use of a red outfit: for the Court, Aya’s outfit was red and orange, with use of a red fur shawl whereas Kyo’s proposal was in red shiny leather.

So, this was not re-appropriation of the economic value of someone’s work, in the meaning of 1240 of the Civil Code. Aya had been inspired by the mood board and had used successive ideas/themes/impressions but had gone on to create something different.

Kyo lost.

But that was not all... Kyo was forced to pay Aya moral compensation [fairly low: 5 000€] because of the damage made to her reputation by the tremendous media impact of the accusations, both on social media and in the press, together with the warning letter sent to Aya's producer, Warner Music France.

Clearly, accusing someone with a reputation on social media comes with a risk, as is publicizing accusations and legal disputes in the press and on the internet, without the appropriate moderation and objectivity.

The Court did underline however that there was no recorded agreement between the parties relating to the use of the mood board so no basis for contractual liability which may have changed the outcome for Kyo whose lawyer mentioned his client was considering appealing.

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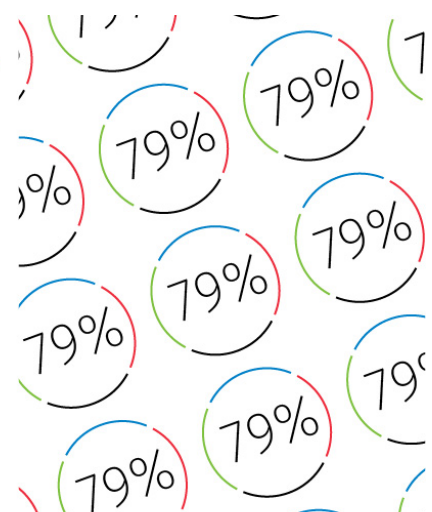
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