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Prohibition measures and compensation granted to the Rubik's Cube on the basis of parasitism

Camille Pecnard, Pierre Emmanuel Meynard (Lavoix) · Friday, March 3rd, 2023

There has been a new positive development for the world-famous Rubik's Cube in proceedings in France against a former distributor.



In a decision of 19 November 2022, the Paris Court of Appeal prohibited the marketing by a former distributor of a lookalike puzzle cube reproducing the characteristics of the Rubik's Cube, holding that the former distributor took advantage of the Rubik's Cube's long-standing notoriety without making any investments itself. In particular, the Court held that the sale of the lookalike puzzle cube constituted an act of parasitism because it reproduced the internal mechanism of the Rubik's Cube and the external appearance of the Rubik's Cube, and was marketed under the name "Magic Cube", which was the name originally given to the Rubik's Cube.

Under French law, a party is held liable on the ground of parasitism if it follows in the footsteps of the claimants and free-rides on their efforts and investments, while avoiding any own investment.

In this case, the Court noted that the former distributor did not demonstrate the investments it alleged to have made. In fact, the Court underlined that he had been the distributor in France for "Rubik's Cube" products since 2002. He therefore had extensive knowledge of the market of the well-known Rubik's Cube, as well as of its commercial strategy and retail networks.

This decision overturns the judgment of the Paris court of first instance of 29 October 2020, which had dismissed the same claim for parasitism. This court considered that, in the absence of a likelihood of confusion, it had not been established that the defendant sought to benefit from the well-known status of the Rubik's Cubes and from the investments made in its promotion and design.

The Court of Appeal reminded that parasitism does not require evidence of a likelihood of confusion. It also partly confirmed the judgment in first instance to the extent that it recognized the infringement of the Rubik's word and semi-figurative trademarks by a second defendant, who sold the lookalike puzzle cubes in its store.

The of the Court of Appeal will become final if it is not brought before the *Cour de cassation*, the French Supreme Court.

*** The authors represented Spin Master Toys UK Limited, the new owner of Rubik's Cube, in the proceedings before the French courts.**

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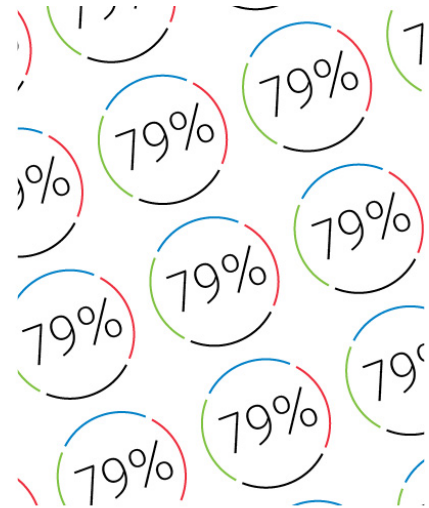
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