

JUDGE FINDS THAT *LOVE BITES* IS FLIRTING WITH LICENSING DISASTER

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PRECIS: A Quebec court has granted an interim injunction against a US defendant ordering it to stop broadcasting the television series *Love Bites*. The court found that the defendant had failed to respect a licence agreement by associating the series with commercial products and, in addition, had wrongly adapted the concept from the original series.

In *Distributions Avanti ciné vidéo inc. c. JWTwo Entertainment, a division of J. Walter Thompson USA Inc.*, 2006 QCCS 5077 (QueSupCt; 2006-09-27) Justice Casgrain of the Quebec Superior Court has granted an interlocutory injunction holding that *Love Bites*, a supposed US adaptation of the hit Quebec television series *Un Gars, une Fille*, was using it as a means of promoting commercial products, thus failing to preserve the essence of the show's original concept.

Les Distributions Avanti Ciné Vidéo Inc and Les Productions Avanti Ciné Vidéo Inc, which hold all IP rights in the TV series *Un Gars, une Fille*, signed a licence agreement with JWTWO Entertainment (a division of J Walter Thompson USA Inc) to create an US version of the series. While the original concept was a 30-minute show, the episodes of the US series were snapshots, approximately two-and-a-half-minutes long, separately broadcasted and inserted in between commercial breaks for hair products. Before the Quebec Superior Court Avanti sought to obtain a provisional interlocutory injunction to cease all broadcasting of the US adaptation, which had been broadcast for two weeks before the proceedings.

According to Avanti, the US version contravened a clause of the licence agreement stipulating that the licensee must preserve "the essence of the

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format and the television series". Avanti alleged that JWTWO did not respect this clause because the original concept of the series has nothing in common with the US adaptation as broadcast.

JWTWO pleaded that Avanti had, as least verbally or implicitly by its silence, agreed to the way that the original series had been adapted.

In his analysis, the judge considered the matter to be one of urgency because each time the public watches a TV series, it creates a certain image of the series that can be difficult, if not impossible, to alter afterwards. It could cause serious damage to Avanti if in fact the original concept was denatured and spoiled. Despite contractual obligations, Avanti was never consulted as to the development of the US project nor did the final product receive approval from it. Moreover, no royalties had been paid to the owners of the copyrights.

Further, JWTWO had used the series for promotional purposes, more specifically for promoting Sunsilk hair products. It appeared from JWTWO's marketing plan, which was introduced as proof during the proceedings, that the TV series was merely of secondary importance as opposed to the project's promotional aspect. Consequently, the judge was of the opinion that it was sufficient to consider that the clause of the licence agreement was breached by JWTWO.

The judge did not consider it necessary to look at the balance of inconvenience as the Avanti plaintiffs had a clear-cut case.

Consequently, the judge concluded that, all facts considered, Avanti was entitled to obtain an interlocutory injunction in order to avoid damages that could be caused to it

