

Cosmetics The Court of Appeal in Paris ruled in favour of a cosmetic consortium that had taken action against a counterfeiter on the grounds of intellectual property. A first occurrence in France, which can potentially become a reference for future jurisprudences.

L'Oréal's copyright on perfumes officially recognized.

Just like a literary or artistic work, perfume might, from now on, enjoy the protection of copyright in France. Indeed, in its judgment rendered on Wednesday, the Paris Court of Appeal ruled in favour of L'Oréal, which had taken action against Bellure NV for intellectual property infringement in the spring of 2003. *"It is the first time that a French court recognizes copyright's protection for a fragrance"*, declared Denis Monégier of Sorbier, attorney and legal advisor of the department of intellectual property law at Linklaters, who pleaded for the cosmetic consortium.

L'Oréal could not have hoped for a better case for learning to handle this new weapon against illegal copying, which adds to the more traditional procedures taken against violations on trademarks or industrial designs on bottles and wrappings. A simple glimpse could not indeed have sufficed to prove that behind Pink Wonder, Cheek to Cheek, Nice Flower, Sweet Pearls, Pure Class Men, Pure Black, La Valeur and Arrivederci Due, sold by Bellure, lay hidden copies of L'Oréal's Miracle, Romance, Anaïs Anaïs, Noa, Emporio IL, Drakkar Noir, Trésor and Acqua Di Gio. According to L'Oréal, these false products were sold in "reference" to the originals and imitated their composition. A strong olfactory proximity between the two sets of perfumes was established thanks to sensorial and physico-chemical analyses of their juices.

Not as a trademark

Until now, "there was no protection for fragrances", cheerfully declared José Monteiro, manager of L'Oréal's trademark department. A perfume could not be registered as a trademark, and patenting it led to its inevitable disclosure. The recognition of copyright was refused to this category of products in the past, but the magnitude and the nature of infringements can justify the evolution of the current jurisprudence.

Although Bellure is now condemned to withdraw and destroy the copies, as well as compensate L'Oréal for almost 1.5 millions Euros, it can still appeal before France's Supreme Court, the Court of Cassation. Moreover, no one can tell whether such a ruling as this one, in a country that fiercely protects copyright, will be emulated in Benelux and Germany, where L'Oréal is now suing Bellure. In the Netherlands, the copyright was recognized in 2003 for the Tresor perfume.