

COURT OF FLORENCE

COMPANIES SECTION

Judge Dr. Niccolò Calvani

following the hearing on 3rd of June 2020

kept in the written form as provided in art. 83/7-h dL 18/2020, has pronounced the following

ORDER

Nicolas Caposiena and Human Design Italia S.n.c. of Nicolas Caposiena and Gerarda D'Onofrio (hereinafter: HDI) exhibit:

1. Mr. Robert Alan Krakower, aka Ra Uru Hu, by combining different holistic disciplines, has created a system called “Human Design” which, by developing the Global Incarnation Index through a software (Maia Mechanics Imaging), allows the end-user to obtain a personalized chart (so-called Rave Bodygraph), as graphic and symbolic depiction of their Human Design, which analysts trained by IHDS-International School of Human Design (like Caposiena) can interpret;
2. In 1999 Krakower established the company Jovian Archive Media Pte. Ltd. (“Jovian Archive”), as exclusive owner of “Human Design” system’s copyright and licensor of the same for Human Design organizations established in world countries and for IHDS;
3. Starting from 7th December 2009, Caposiena has become the exclusive licensee, for Italy and the Italian language, of all rights to the economic exploitation pertaining to the “Human Design” system, as well as of all intellectual property rights derived from and based on Krakower’s teachings; and this due to the assignment for consideration of the same rights by the previous licensee, Ms. Viviana Perrucchetti, who, as allowed by the original license agreement with Jovian Archive, transferred to Caposiena the right to create, translate and publish, in Italy and in Italian language, “Human Design” system educational resources (books, CDs, DVDs), as well as the ownership of the internet domain “www.humandesignitalia.it”;
4. So far Mr. Caposiena has published several books – translations of writings by Krakower and other authors as well as a volume he has written – through the HDI, which he has signed

a publishing agreement with; he also registered:

- a figurative mark depicting the sketched illustration (mandala) of the Human Design (application no.302008901600320 on 18th of February 2008, renewed with application no.362018000043816 on 3rd of August 2018);
- a word mark “RA URU HU” (application no. 302014902238973 on 3rd of March 2014);
- a figurative mark containing word elements “Human Design System of Ra Uru Hu” with the illustration of a 9 Centers, 36 Centers and 64 Gates mandala (application no.302014902316043 on 11th of December 2014);

5. In June 2019, AAM Terra Nuova S.r.l. (hereinafter: TN) published, distributed and put for sale in Italy the book “Human Design” by Mr. Chetan Parkyn, despite the claimants had warned them not to pursue the publishing project since September 2017; the book exactly traces the contents covered by Jovian Archive’s copyright as well as the distinctive illustrations and trademarks registered by Caposiena;

6. Besides TN, in its monthly magazine November 2019 issue, has published an article that advertises Chetan Parkyn’s book, as well as the organization of workshops (Human Design - Module 1 and Human Design - Module 2) to be held in Osho Miasto association’s premises in Casole d’Elsa, July 2020;

7. Mr. Parkyn claims he has been authorized by Mr. Krakower to spread his teachings, although the Jovian Archive has officially disowned him in 2015.

Therefore, the claimants believe that the counterparty’s conduct would be detrimental to their copyright and trademark rights, would suggest the hypothesis of unfair competition, and have already caused severe economic damage, leading to a dramatic decrease in Caposiena’s books sales.

Consequently, the claimants request that this Judge:

- restraints the defendant from marketing Chetan Parkyn’s Human Design book in Italy as well as from using the claimants’ trademarks;
- orders the withdrawal from the market of all copies of Parkyn’s book and the disclosure of TN’s tax and accountancy documentation pertaining to the book’s production, marketing, and advertising;
- sanctions a penalty for non-compliance, and publication of the precautionary measure.

TN requests the dismissal of the claim:

- About copyright, because it would not be feasible even for Krakower (under American

law) since the “Human Design System” is a set of concepts and not a work, nor would it have been validly transmitted to the claimants;

- As far as the trademarks are concerned, due to the nullity of the same, which would imply an activity – psychological counselling – which is prohibited in our legal system when it is carried out by subjects without a qualification recognized as valid; secondly, even if those trademarks were to be considered valid, there would be no infringement, as TN did not use any element that is identical or similar to the claimant’s trademarks with the purpose of identifying any of the products or services the trademarks are registered for, nor to perform any other function of the trademarks, but merely as elements of the language used by the author of the work; furthermore, TN would be totally unrelated to the organization of workshops at the Osho association.

Lastly, the *periculum in mora* would be completely lacking, considering that the claim was filed almost two and a half years after the first warning and eight months after the publication of the book.

(1) On copyright

This Judge considers that the claim for merit announced by the claimants does not have a probable cause.

The defendant has referred to the US law, under which copyright cannot be recognized for an “idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described,” while the right is reserved precisely to the form in which an author can express them.

The claimants state the inconsistency of TN’s remarks on American laws.

However, it should be noted that, for the Berne Convention of 1886-1896, authors can assert the rights recognized in their respective countries of origin in all acceding States (art. 5.2), as well as those expressly affirmed by the Convention. It is therefore not indifferent to know if and what rights are recognized to Krakower or to his heirs in his country of origin and, in this regard, no evidence has been provided by the claimants to prove that they had exclusive rights on the “Human Design System” or its teachings: those teachings cover ideas, procedures, methodologies of representation that can be freely talked about, mentioned and illustrated even by those who are not the **creators**, without this infringing intellectual property rights; nor, to do so, **does one need** to be authorized by a school or by its founders, since in our legal system the representation of ideas is free and is not subjected to cult-like behaviors.

Maybe an issue could be raised about the moral right of the author, if someone would pass

off a system devised by someone else as their own; but in this case, while it does not appear that Parkyn proclaims himself the founder of the school of thought headed by Krakower (this is not what the claimants complain about), neither would Caposiena and HDI be entitled to claim the authorship belonging to the alleged real founder, as the moral right is not transmissible.

Copyright can instead be recognized to Krakower's writings; the Berne Convention also protects the authors' "works" (art. 1-3), and Italian law does the same (art. 1 L 633/1941).

But if Krakower cannot be the holder of a general intellectual property right on his ideas (rather than on his works), he cannot have sold it to third parties.

Therefore, whoever the Jovian Archive is (the defendant refers to three companies going by this name, the claimants reply that it is always the same, but the matter is irrelevant at this point), who would have had transferred the exclusive rights for Italy to HDI and the Perrucchetti, and the latter to Caposiena, the object of the transfer cannot be the right to exploit copyright that does not exist.

The documentation attached by the claimants to the brief dated 22/5/2020 does not prove the contrary: if JA is the owner of a trademark (doc. 43), it does not mean that it also owns a copyright; if it was the owner of intellectual property rights on certain individual works (the electronic file "Design Concept," by Ra Uru Hu, registered by a Jacqueline Karen Riley, doc. 45; the book "The Human Design System," by Ra Uru Hu, registered again by Jacqueline Karen Riley, doc. 46), at best it could sell those rights on those works, but neither it nor its assignees could prevent others from publishing other works on the "Human Design System"; and, certainly, the fact that JA has named itself the owner "*expressis verbis*" in the agreement does not attribute any right to the same. However, there is no evidence that Krakower has sold any rights to JA.

Therefore, neither the Design and Human Design System nor the Krakower doctrine, let alone the name Ra Uru Hu, are protected by copyright in themselves, while the "forms in which they are divulged" certainly are, and it is not about any "book form", as rebutted by the claimants, but about the form of the work that is expressed in "a" book, the one written by the author.

Lastly: with the reply brief, the claimants added another topic, stating that Parkyn's book would be a plagiarism of those published by HDI.

This is a new topic: in the claim, the claimants complain about the copyright infringement that would be due to them on the Human Design System; in this part of the brief, the scenario

is no longer the infringement of alleged rights to divulge the teachings of Krakower, but the unauthorized copy of Caposiena's, or Krakower's expressions of those ideas.

While wanting to tackle the topic rather than dismiss it as new and not allowed, we can note, in the first place, that it is not clear whether the object of plagiarism would be written by Krakower or Caposiena; in any case, no passage from Parkyn's book is reported that would reproduce works of one or the other.

The claimants only state that:

- the work edited by TN, being a handbook, *“does not contain any theoretical argumentation but only succinct descriptions of the graphic and numerical elements present in the Human Design works (Centers, Gates, etc.)”*;
- Parkyn himself *“does not in any way attribute to himself the authorship of reinterpretations, additions or modifications whatsoever – of the original descriptive precepts – but in fact implicitly confirms that he intended to follow the original dictates of Ra Uru Hu slavishly”*;
- the defendant's book shows *“exactly the numbers, symbols, and definitions present in the original one, giving, moreover, the same meanings to the same”*;
- the attached software is identical to Maia Mechanics *“for the quantity and quality of the graphic and numerical symbols and coinciding, as far as the calculations made are concerned, to those of today's claimants”*;

Therefore, they are handbooks that divulge a doctrine, and it is obvious that the more faithful the authors of the handbooks are in reporting their principles, the less difference there will be. There is no plagiarism if two geometry handbooks, for example, refer to Pythagoras' theorem in the same terms and equally reproduce the drawing of a right triangle and the areas built on its sides; nor if, in reporting the thought of a philosopher, the author uses the words of the thinker without making any reinterpretations, additions or modifications of any kind. Therefore, if the Human Design System speaks of Centers and Gates, the books that illustrate it must talk about Centers and Gates. If it is built on numbers and symbols, its structure can only be exposed by those numbers, those symbols, the meaning, and the definition of those and these.

Beyond these general considerations, as mentioned, there are no examples that should lead the Judge to recognize plagiarism: the request on this point is rejected.

(2) On registered trademarks

The exception of nullity of the marks, because they would imply an activity prohibited by

law, cannot be examined in-depth, in the absence of sufficient elements to classify the activity carried out by Caposiena.

According to art. 20 CPI, the use of a trademark identical or similar to that of others is prohibited when it aims to present products identical or similar to those of the owner, ending up causing confusion between products or manufacturers.

There are trademarks that correspond to the surname of the founder of a company; the use of that surname is unlawful if it is used to distinguish goods or services that are confusingly similar to those of the owner, when put on the market; it is not illegal if an author publishes a biographical work on the founder of the company and owner of the trademark of the same name.

That said, it does not appear that TN has ever used the figurative mark (Rave Mandala), the word mark RA URU HU or the figurative and word mark “Human Design System of Ra Uru Hu”, as a trademark of its products.

Chetan Parkyn’s book bears neither the mandala nor the name of Ra Uru Hu on the cover (doc. 25 of the claimants), while the words Human Design are nothing more than the synthesis of Krakower’s teaching, used in the title as a summary of its content; on the inside pages there are illustrations of the Bodygraph, but this is not the brand that distinguishes the product: it is rather that structure inside the human body, obtained by the conjunction of the so called 9 Centers through 36 Channels on which 64 Gates open, which inspires the symbol registered by Caposiena as a trademark, and at the same time it summarizes – it seems – the teaching of Ra Uru Hu. Inserting these elements in the book does not mean distinguishing a product – in infringement of another product characterized by the same distinctive element – it means instead divulging that doctrine that stands on them and could not be explained without.

The claim must, therefore, be rejected, charging the costs of the proceedings.

For these reasons

The Court of Florence, Companies Section, rejects the claim and condemns Nicolas Caposiena and Human Design Italia S.n.c. of Nicolas Caposiena and Gerarda D’Onofrio, jointly and severally, to refund Editrice AAM Terra Nuova S.r.l. of the costs of this proceeding, paid in € 6750 for professional fees, in addition to the refund of general expenses and legal accessories.

Florence, 3rd of June 2020

The Judge
Dr. Niccolò Calvani