



The Paris Court of Appeal recognizes parasitism in the absence of copyright infringement in a luxury dispute

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Resume: *On January 31, 2025, the Paris Court of Appeal recognized the originality of Bulgari’s Serpenti jewellery, protected by copyright, but dismissed the counterfeiting claim, ruling that APM Monaco’s designs did not sufficiently replicate their characteristic aesthetic combination. However, it did find APM guilty of parasitic behavior, ruling that the brand was taking unfair advantage of the Serpenti collection’s image and reputation. APM was found liable and the sale of the pieces in question was prohibited.*

For millennia, the serpent has fascinated, frightened, and inspired humanity: a symbol of transformation, regeneration, and power, it has traversed cultures, mythologies, and art. In 2025, a year marked by the sign of the serpent, this symbolism takes on particular resonance for the house of Bulgari, who’s iconic Serpenti has embodied the art of metamorphosis and innovation for more than seven decades. According to the Chinese calendar, the wood serpent represents growth, flexibility and long-term strategies, values that perfectly reflect the vision and identity of the Italian fashion house.

To celebrate this universal symbol, Bulgari organized several international exhibitions in 2025 in Shanghai, Seoul and notably Mumbai, where the most recent concluded on October 17 at the Art House of the Nita Mukesh Ambani Cultural Centre in BKC. This

immersive experience offered a unique dialogue between Bulgari’s heritage and historical and contemporary Indian art, incorporating multimedia works and AI-based installations, curated by Nature Morte. The exhibition notably featured the digital creations of artist Refik Anadol, offering a 360° mirrored environment in which visitors could encounter every facet of their being: a symbolic journey reflecting the evolving spirit of the serpent. Through this path, the serpent appears as a universal symbol of power, mystery and creativity, illustrating the house’s ability to draw from history while continually reinventing itself.

Since antiquity, the serpent has been a ubiquitous motif. In ancient Egypt, it was associated with the creation of the world and the struggle between light and darkness, embodied by Bastet and Apophis. In Greco-Roman mythology, it symbolized

transformation and regeneration due to its ability to shed its skin, while the Ouroboros, (a serpent biting its own tail), embodied the eternal cycle of the universe. The serpent also appears in literature¹ and in popular culture, notably through Elizabeth Taylor who wore in the 1960s, a diamond and emerald encrusted Serpenti bracelet during the filming of Cleopatra.

Over the decades, Bulgari has continually revisited and adapted the serpent emblem to technical and aesthetic innovations, making Serpenti a living and protean symbol. This heritage and symbolic richness, however, comes with a cost: its renown makes it vulnerable to imitation and unauthorized use.

It is in this context that the decision of the Paris Court of Appeal *Bulgari v. APM*, takes on significance. The court was called upon to assess the infringement of the serpent emblem and determine the extent to which Bulgari could protect the uniqueness and identity of its Serpenti. Beyond a simple commercial dispute, this case underscores the necessity for luxury houses to defend their intangible heritage, ensuring that every manifestation of their iconography remains protected and preserved in its singularity.

The case opposes the jewellery house Bulgari to the company AMP Monaco. Bulgari

accused APM of marketing snake-shaped jewellery pieces that were very close in appearance to those of its famous Serpenti collection. According to Bulgari, these pieces not only imitated the visual features of its creation but also sought to benefit from the reputations, prestige, and significant investments surrounding the iconic line.

On January 31, 2025², the Paris Court of Appeal first recognized that the Serpenti jewellery pieces constitute original works protected by copyright (I), due to their aesthetic choices, notably the stylized serpent head, the gemstone eyes, the shape of the scales, and the overall proportions. However, the court did not find infringement: it considered that the jewellery sold by APM presented sufficient differences to avoid identical or equivalent reproduction.

Secondly, the Court found that APM Monaco had engaged in parasitic conduct (II). It held that the company had sought to take undue advantage of Bulgari's reputation, luxurious image, and creative and marketing investments, without bearing the same creation or communication costs itself.

This decision is significant for the jewellery sector, as it confirms, on the one hand, that jewellery creations can be protected by

¹ E.R Eddison, *The Worm Ouroboros*, 1922.

² Court of Appeal of Paris, January 31, 2025, RG n°23/05552.

copyright when they reflect genuine creative choices, and on the other hand, that even in the absence of infringement, parasitic behaviour may be sanctioned when the aesthetics or reputation of a luxury house is exploited in an unfair manner.

It is therefore necessary to examine the decision in order to understand the distinction made by the court, namely the difference between infringement and parasitic behaviour.

I. The recognition of copyright protection for Serpenti jewellery: asserting originality but limiting appropriation

The first section will analyse the ways in which the creative identify to Serpenti jewellery emerges from a distinctive combination of aesthetic elements (A). The second section will demonstrate that this signature combination is nonetheless difficult to replicate accurately, thereby preventing effective counterfeiting (B).

A. The assertion of originality based on the combination of aesthetic choices

Copyright is a property right relating to the original external form of intellectual property³.

Copyright is both a personality right in its moral dimension and a property right in its patrimonial aspect. The economic component consists of granting the author, and then his successors, a monopoly on the exploitation of the work in the form of transferable and time-limited pecuniary rights.

The conditions for copyright protection are listed in the Intellectual Property Code⁴. Indeed, there is a requirement for a creation of form that must be perceptible in essence and a requirement for originality of creation. Originality can be understood as the expression of the personal character of the author's creation.

In France, no public body is authorized to receive an intellectual creation and classify it as a work of the mind. This classification is therefore solely at the discretion of the sovereign power and the judges hearing the case. The idea is therefore to be able to pre-establish proof of one's creation.

The dispute between Bulgari and APM Monaco ultimately allowed the Paris Court of Appeal to reiterate an often-forgotten fact:

³ L. Pfister « *La propriété littéraire est-elle une propriété ? Controverses sur la nature du droit d'auteur au XIXe siècle* », RIDA 2005, p.117.

⁴ Article L111-1 and seq. of the Intellectual Property Code.

jewellery is not just about gemstones but also about intervention and personal expression. When this expression is sufficiently assertive, it can attain the status of a work protected by copyright.

It was precisely on this ground that Bulgari has convinced. The company did not simply point out that the snake is one of its iconic motifs. It showed how in the Serpenti collection, the reptile is not represented as a generic motif but as a personal vision, shaped by a series of coherent aesthetic choices.

As for the snake's head, it was described as : thin, flattened, elongated, slightly curved, with balanced proportions, eyes made of gemstones cut into teardrops, the desired effect of a piercing gaze, scales in elongated hexagons containing exactly two diamonds, the movement of the diamonds fading along the bracelet, a snake that wraps itself around the wrist.

Far from being anecdotal details, these choices form a true visual signature. The luxury brand took care to describe precisely the specific characteristics of the bracelet, ring and earrings in question, allowing the court to grasp the aesthetic unity of the ensemble.

These elements combined were sufficient to characterize the originality required to benefit from copyright protection. The court considered that Bulgari was not seeking to appropriate the snake motif but demonstrated that the combination of the specific characteristics of the jewellery in question, which precisely define the scope of the protection sought, made them original works eligible for copyright protection.

The Paris Court drew a clear conclusion: originality lies in this specific combination, this language unique to the collection's designer. It matters little that the animal theme is old or shared by other jewellers⁵, what copyright protects is not the idea of the snake but the unique way in which it is reinterpreted.

In doing so, the court recognizes that these iconic pieces of jewellery go beyond simple stylization to achieve true artistic expression, worthy of the protection afforded to any intellectual work. This clarification is welcome in a sector where the balance between inspirations and imitation is a regular topic of debate. However, this protection has its limits.

B. The limits of this protection: the impossibility of establishing infringement

⁵ Italian company Carlo Illario e Fratelli since 1940.

in the absence of a reproduction of the characteristic combination

Counterfeiting is the specific intellectual property offense for any infringement or unauthorized use of intellectual property, an infringement of property right. In its general sense, counterfeiting is the fraudulent imitation or manufacture of an item to the detriment of the person who had the exclusive right to manufacture or reproduce it. Beyond being a civil offense, it is also a criminal offense punishable by the courts⁶.

Civil law on counterfeiting, which is by far the most widely used in practice, requires that the constituent elements of counterfeiting be presented. Copyright law stipulates that counterfeiting consists of any representation or reproduction, in whole or in part, made without the consent of the owner of the property⁷. The counterfeit reproduction of the characteristics that constitute the originality of the work is assessed by the similarities between the work alleged to be counterfeit and the original work, and not by their differences. However, not every unauthorized use of intellectual property necessarily constitutes an infringement of rights. It is therefore incumbent upon the author to establish the existence of an

infringement of their rights, for which they are seeking compensation⁸.

In the first instance, the Paris Court of Justice in March 2023⁹ found several designs to be infringing and ordered the Monegasque brand to cease marketing them. However, on appeal, the concept of infringement was not upheld. A careful comparison of the jewellery revealed that the combination of characteristic elements that give Bulgari's creations their distinctive appearance had not been reproduced.

The court notes in this regard that APM jewellery does not reproduce the characteristic head shape, which is more diamond-shaped and lacks the curvature typical of Bulgari models, nor the design of the eyes, which are oval rather than teardrop or pear-shaped, nor the particular arrangement of the scales. These differences, far from being mere details, alter the overall impression, especially since APM models often depict the snake in its entirety, while Bulgari stylizes and isolates the head to create a hypnotic and sensual effect. Thus, no faithful or quasi-faithful reproduction of the appearance of Serpenti jewellery is characterized. The court also rejects Bulgari's argument based on the alleged partial reproduction of the snake's head: here again

⁶ Article L335-2 of the Intellectual Property Code.

⁷ Article L122-4 of the Intellectual Property Code.

⁸ Court of Cassation, 1st Civil Division, Dec. 20, 2017, n°16-13632.

⁹ Paris Court of Justice, March. 8, 2023, RG n°21/06034.

the proportions, shapes and arrangement of the elements are not reproduced in a similar ensemble.

Ultimately, the court ruled that APM jewellery, although reminiscent of the reptilian world, does not reproduce « in an identical combination » the characteristic elements of Bulgari jewellery. Infringement requires the reproduction of the overall design, not just isolated elements. As their overall impression is distinct, no copyright infringement can be found. This conclusion then paves the way for an analysis of parasitism, based on which the court will, conversely, find APM guilty of wrongdoing.

II. Reclassification of APM's actions as parasitism: protection in the service of the economic value of the collection

Analysis of the facts reveals that, in the absence of effective recourse to traditional intellectual property law, protection of the economic value of the collection requires reclassification of APM's actions as parasitism. This basis, now central to the reasoning, makes it possible to address behaviours involving the misappropriation of others' efforts beyond strict private rights. It is therefore important to show how this basis

can be applied while retaining its own logic (A), and to understand how judges identify wrongful imitation and determine the consequences in terms of compensation (B).

A. The partial admissibility of the action for parasitism and the autonomy of this basis

An action for unfair competition or parasitism may be brought by a person who can no longer claim a private right. The dismissal of an action for infringement does not automatically lead to the dismissal of an action for unfair competition¹⁰ as these two actions have separate grounds. According to established case law¹¹, an action for unfair competition is distinct from an action for infringement. These actions arise from different causes and do not have the same purpose. It should be noted that an action for unfair competition requires fault, while an action for infringement requires an infringement of a private right. There is a link between tortious civil liability and parasitism, based on Article 1240 of the French Civil Code.

Parasitism refers to all behaviours by which an economic agent interferes in the wake of another in order to profit from it, without expending any effort or know-how¹². It therefore aims to protect a company against

¹⁰ Court of Cassation, Commercial Division, Sept. 2, 2018, n°17-18390.

¹¹ Court of Cassation, Commercial Division, Nov. 6, 1984.

¹² Court of Cassation, Commercial Division, Jan. 26, 1999.

the unfair behaviour of companies that follow in its wake. Consequently, anyone who, for profit and without justification, significantly draws inspiration from or copies the economic value of another party, thereby gaining a competitive advantage resulting from investments, is guilty of parasitic conduct.

In this decision, the distinction made by the judge between claims for damages and principal claims perfectly illustrates how the admissibility of an action for parasitism can vary depending on the nature of the claims made. Claims for damages, such as those brought by Bulgari France, were essentially aimed at obtaining financial compensation for the economic loss suffered as a result of the alleged appropriation of the value of their creations. These claims were deemed inadmissible, as the court considered that they were not based on a sufficiently direct link with the alleged parasitic behaviour and that they lacked concrete evidence to establish specific and attributable damage.

Conversely, the main claims made by Bulgari SpA were aimed at stopping the parasitic behaviour and preserving the economic value of their designs. These claims were deemed admissible because they were directly aimed at putting an end to the unfair conduct and protecting the legitimate economic interests of the company, regardless of the issue of compensation for damages.

The decision also reiterates the autonomy of parasitism as a legal basis. When infringement proceedings fail, parasitism can serve as an independent protective mechanism. It allows for the punishment of the appropriation of the economic value of a creation, even in the absence of a direct infringement of intellectual property rights. Parasitism thus plays a complementary role, offering additional protection to rights holders or creators against unfair practices that could divert the economic value of their works or creations. This autonomy of parasitism therefore calls for a more detailed analysis of the parasitic imitation strategy employed and the resulting compensation consequences.

B. The characterization of a parasitic imitation strategy and its implications for compensation

The Court of Appeal's decision highlighted the individualized economic value attached to the Serpenti collection, an essential prerequisite for qualifying as parasitism. The court emphasized that since the 1940's, the snake has been a major symbol of Bulgari's identity, continuously featured in successive creations, exhibitions, publications, and large-scale media campaigns. The evidence produced reveals, in particular, massive marketing investments devoted to promoting the Serpenti Seduttori collection. Thus, far from being merely an aesthetic universe, this

collection represents genuine brand equity, an intangible asset, built up, maintained, and enhanced over time. This concept is in line with the established doctrine that the existence of individualized economic value required a combination of reputation, regular investment, and image that identifies¹³ or in disputes concerning the iconic butterfly design of Ban Cleef & Arpels, which has been in use since the 1950's.

Once this economic value had been established, the court noted the significant revival of the Serpenti universe through the thirty pieces of jewellery marketed by APM. Although they are neither slavish copies nor even partial reproductions sufficient to constitute counterfeiting, these pieces of jewellery nevertheless reproduce the essential aesthetic codes of the Bulgari line.

According to the court, such a strategy aims to ride on Bulgari's coattails, taking advantage of the collection's reputation and the investments associated with it, without bearing the creative, marketing, or symbolic costs necessary to develop a comparable universe. This is typically free-riding behaviour, specifically understood as parasitism when no counterfeiting can be established.

This analysis is in line with a consistent trend in case law¹⁴ to protect the brand image of iconic luxury creations and the investments necessary to build them. Parasitism does not offer protection for forms, as design or copyright law would, but rather for the economic effort made to develop a distinctive aesthetic identity. In this sense, it acts as a bulwark against the trivialization or dilution of collections that have become iconic.

Regarding remedial measures, the decision clearly illustrates the differences between intellectual property and unfair competition. Counterfeiting may give rise to compensation for the damage suffered and lost profits, as well as restitution of the profits made by the counterfeiter. Parasitism, on the other hand, based on Article 1240 of the Civil Code, only allows for compensation for losses suffered and lost profits, without considering the profits unduly made by the imitator.

However, it ordered APM Monaco to pay Bulgari €130,000 in compensation for the commercial damage suffered, including moral damage related to the trivialization of the collection, and confirmed the marketing ban, accompanied by a penalty payment.

Thus, the characterization of a parasitic imitation strategy makes it possible to address unfair practices that fall outside the scope of

¹³ Court of Appeal of Paris, Jan. 12, 2024, RG n°22 /02206 Cartier v. Provence Imp'or.

¹⁴ Court of Appeal of Paris, Dec. 15, 1993, n°93-25039 Champagne v. Yves Saint Laurent parfums.

intellectual property law, while ensuring effective protection of the intangible investment of luxury brands.

The decision confirms the ability of parasitism to punish the unjustified appropriation of an aesthetic universe with real economic value, by offering a remedial

framework proportionate to the damage observed.

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