

Can Copyright Stop Politicians from Exploiting Street Art?

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Combo v Jean-Luc Mélenchon before the Court of Paris

INTRODUCTION

COMBO Culture Kidnapper is a Paris-based wheat paste artist known for creating and placing subversive pieces across France. His artworks adorn the edifices of iconic locations and use popular symbols to catch the attention of the public. In March 2016 COMBO placed a large wheat paste on the wall of the Gustave Flaubert College in Paris depicting a representation of Marianne, the national personification of the French Republic. By taking an image which evokes the French Revolution, he was able to hijack the message for his own purposes. COMBO's Marianne represented a young woman with a bare right breast, carrying the French tricolour flag on her left shoulder, accompanied by the caption 'Nous voulons la justice' ('We want justice'). His intention was to reclaim this celebrated image from the far right.¹

COMBO has created a series of racially diverse La Marianne artworks in Paris. The artwork in the present case is *La Marianne Asiatique* (The Asian Marianne) which was produced in 2017 at Rue du Temple located a mere few steps from Place de la Republique.² To the disdain of the artist, *La Marianne Asiatique* was featured in several videos promoting the 2017 presidential campaign of French leftwing politician Jean-Luc Mélenchon and his political party La France Insoumise (France Unbowed). Additionally, COMBO's wheatpaste was incorporated into a video posted by Mélenchon on Facebook and YouTube in March 2020.³ Such videos were also published in France's oldest daily newspaper Le Figaro. In all the videos in question *La Marianne Asiatique's* image is taken from the shoulders upwards, or simply displaying the face of the figure. Additionally, in more than one case the artwork was falsely attributed to an unknown 'styx'.⁴

COMBO responded in June 2020 making the statement: 'since Jean-Luc has used my work without asking me, I contacted his team via my lawyer to ask them to remove my fresco from their clips'.⁵ In a letter requesting Mélenchon and La France Insoumise to cease the exploitation of his work, the artist asked for a sum of 100,000 euros in compensation for damages to his reputation.⁶ Then, the artist's grapple for control over his work took an unfortunate turn in the courts. In September 2020, taking the view that Jean-Luc Mélenchon and his party had infringed his copyright, COMBO brought a further claim of 200,000 euros on the basis of infringement to his economic and moral rights.⁷ Yet, in January 2021 the Court of Paris rejected all his requests and dismissed the action.⁸

BACKGROUND AND THE PRELIMINARY FINDINGS OF THE COURT

COMBO's reinterpretations of the Marianne image have the specific purpose of defying rightwing ideology. The artist was reported as saying:

*'I have a blonde Marianne, one who is Asian and one with a darker look, this is our national symbol of the freedom that helps the people. We will recover this pure symbol so as not to leave it in the hands of the extreme right because they use our flag and Marianne to make France something that it is not.'*⁹

As mentioned, *La Marianne Asiatique* was placed in a variety of promotional videos for Jean-Luc Mélenchon and his party, suggesting an even closer, and for COMBO, uncomfortable affiliation. Indeed, the artist expressed his aversion to having his piece placed in such an overtly political context.

But, not so contrastingly, during the French 2017 Presidential campaign Jean-Luc Mélenchon was known for clashes with his far-right political rival Marine Le Pen who espouses anti-globalist and anti-immigrant views.¹⁰ Ultimately, as we will see, the fact that Mélenchon has political views similar to those of COMBO contributed to the artist's loss in the legal action, especially as far as the moral right of integrity is concerned.

The Court of Paris first considered the politician's personal responsibility since the contested videos were posted by a social media manager affiliated with La France Insoumise and Mélenchon. It was held that Mélenchon himself could in fact be considered as the publisher of said videos since the person entrusted to conduct the publication evidently did not act independently and outside of his control.¹¹ Also, the Court had initially discussed whether COMBO was entitled to make a claim under the French Intellectual Property Code. This was quickly established because COMBO provided evidence which proved his ownership and that the work had been created by him under his pseudonym.¹²

Interestingly, it was questioned on Mélenchon's behalf whether the work bore the imprint of COMBO's personality since Marianne was such a well-known cultural staple. More specifically, it was argued that any modern representation draws from 'a common fund' which is not subject to copyright protection.¹³ The argument (pushed by Mélenchon and his party) that the artwork lacked originality (the most important requirement for attracting copyright) was a bold one and it is certainly reassuring that the court did not deign to justify it. If we are to imagine a legal landscape in which any work encompassing a popular figure is immediately relegated to the public domain, this would have a negative impact not only on the proliferation of creativity but would also stifle freedom of expression. The Court of Paris accepted the artist's point that he had made specific aesthetic choices and recognised that *La Marianne Asiatique* was unique in comparison to other representations of Marianne.¹⁴



NO INFRINGEMENT OF COMBO'S MORAL RIGHTS

Centrally, COMBO alleged that the appearance of *La Marianne Asiatique* in Mélenchon's campaign videos constituted an infringement of his moral rights of attribution and integrity.¹⁵ It should be reminded that moral rights are somewhat related to, but also different from, copyright. While the former rights protect the non-economic and personal interests of artists, the latter aims at protecting their economic interests.

Specifically, the artist drew the attention of the court to a YouTube video entitled 'les 15 et 22 mars, votez pour des listes citoyennes et insoumises!' ('The 15th and 22nd March, 'vote for citizens and the unbowed!'). In this video *La Marianne Asiatique* is featured after an opening shot of Mélenchon working at his desk. The art piece fades away via a transition of birds revealing The Statue of the Republic, the sculpture of Marianne created by Léopold Morice in 1908 in Place de République. What can be seen is that COMBO's work has been altered, his signature is absent, and the 'Styx' moniker is visible. Also, the message 'Nous voulons la justice' was not included.

The court expressed little sympathy to these claims. The defendants had argued that street art by its very nature is ephemeral and thus intended to be modified over time. The Court of Paris accepted this reasoning noting that since *La Marianne Asiatique* had been created in a public environment and without authorization, and is at risk of being defaced, which makes the attribution and integrity rights susceptible to being infringed. The suggestion that street art should expect to be degraded may on the one hand appear practical, but on the other marks a worrying trend of street art being relegated to a lower standard of moral right protection than other works of art.

Another condemning hallmark that swayed the decision out of the artist's favour was that the modifications of *La Marianne Asiatique* could not be attributed to the defendants.¹⁶ In particular, Mélenchon was able to establish that when the campaign videos were recorded, the message associated with the work 'Nous voulons la justice' had already been deleted by someone else.¹⁷

Concerning the second aspect of the integrity right claim, the fact that COMBO objected to his work being placed in an overtly political setting, was arguably the strongest element of his case. Ultimately, COMBO's disdain was borne from the many controversies and provocations he perceived that Mélenchon had been involved in. These actions, he argued, are contrary to the messages which he wishes to convey in his work.¹⁸

Yet, the artist's belief that the cooptation of his piece by Mélenchon and his party was derogatory did little to sway the judgment. The Court of Paris held that the artist failed to prove that his work had been treated in a way which was prejudicial to his reputation or honour, and that the way the defendants used his artwork distorted its very message. Indeed, the court highlighted the range of perspectives shown in the contested videos. These included wide shots of crowds at demonstrations, close-ups of young protestors, some of whom wore the Phrygian caps associated with Marianne and the French Revolution. The artist's complaint of the transition shot featuring the birds used in 'les 15 et 22 mars, votez pour des listes citoyennes et insoumises!' was almost ridiculed by the court which regarded the imagery of birds as evoking the very spirit of freedom COMBO proclaimed.¹⁹ Because of all the above, the Court denied a claim of infringement of the integrity right. The artist's lawyer expectedly could not hide his

disappointment and added that '*Combo found it insulting to be affiliated with the far left, but the judge felt that he [the artist] shared the same values of the left and of humanism.*'²⁰

Similarly, as far as the attribution right is concerned, the Court of Paris decided that the false attribution to the unknown 'Styx' could not be deemed the fault of the defendants. It was not Mélenchon nor La France Insoumise who altered the work by adding that name to the mural. The court held that such misattribution not only was not the result of the defendants' actions,²¹ it also reflected the very nature of street art – basically, a kind of vulnerability which should be accepted by those creating artworks in the public space.²² The Court therefore rejected the claim based on the violation of the attribution right.

FREEDOM OF PANORAMA

The Court of Paris also established that the freedom of panorama exception should apply in the present case (this exception allows third parties to use certain artworks placed in the public environment). This resulted in the dismissal of COMBO's claim for infringement of his economic rights. Indeed, the Court affirmed that as matter of law, the exception of freedom of panorama may apply to any scenario that does not constitute a commercial endeavour. This was yet another factor taken in the defendants' favour since it was established that it could not be seriously argued that the image of *La Marianne Asiatique* placed on Rue du Temple was reproduced by Mélenchon and his party for commercial purposes. Rather, the artwork was reproduced for the direct effect of illustrating La France Insoumise's political message in favour of 'a new republic'.²³

Furthermore, the court highlighted that had the freedom of panorama exception not been successful, Mélenchon and his party would have nevertheless benefited from the provision allowing the contested videos to be permissible as a short quotation.

CONCLUSION

Overall, the final decision of the Court of Paris left COMBO with little recourse and a rather damning condemnation of his attempt to claim the rights that French copyright law in principle affords him.²⁴ Evidently, this has been a disappointing outcome for COMBO. As we have seen, throughout the case the court made little to no concessions in favour of the artist. While the Court of Paris emphasised that the facts were considered strictly in the context of this case alone, one cannot help feeling that it has left a disquieting legacy for street artists in France.

COMBO's lawyer expressed the determination of his client to challenge the decision. At the time of writing, we are not aware of any appeal filed by the artist. What is certain is that COMBO has expressed, via his lawyer, his general willingness to change the position of French judges on copyright protection of street art:

*'[i]t is a fight which concerns all actors in the world of street art, and which deserves a real reflection: by not granting street artists full copyright protection, we run the risk of denying art its universal character, which is an unbearable attack on its essence and its vocation.'*²⁵

- 1 Page 10 of the decision.
- 2 Page 2 of the decision.
- 3 Les 15 et 22 mars, votez pour des listes citoyennes et insoumises!
See the YouTube Video, <https://www.youtube.com/watch?v=yKeR51jlkj4>
- 4 Page 8 of the decision.
- 5 See the webpage <https://www.lejournaldesarts.fr/actualites/le-street-artist-combo-deboute-de-son-action-contre-melenchon-152719>.
- 6 Page 3 of the decision.
- 7 Page 4 of the decision
- 8 Tribunal Judiciaire de Paris, Jugement 352J W B7E CSWS.
- 9 Page 10 of the decision.
- 10 See the journalistic account at the webpage, <https://www.france24.com/en/20170402-france-far-left-melenchon-chair-table-more-likely-win-le-pen-elections>.
- 11 Page 3 of the decision.
- 12 Ibid.
- 13 Ibid.
- 14 Ibid.
- 15 Page 10 of the decision.
- 16 Page 10 of the decision.
- 17 Page 11 of the decision.
- 18 Ibid.
- 19 Page 12 of the decision.
- 20 See the webpage of the Le Journal des Arts of 22 January 2021 at <https://www.lejournaldesarts.fr/actualites/le-street-artist-combo-deboute-de-son-action-contre-melenchon-152719>.
- 21 Page 14 of the decision.
- 22 Ibid.
- 23 Page 13 of the decision.
- 24 This is not the first time the Court of Paris ruled on a copyright case focusing on street art. It also did so in a 2007 dispute. In that year Peugeot organised a show room in Paris where plexiglass reproductions of the pieces by renokwn French artist Invader – i.e. mosaic tiles based on the Space Invader iconic videogame of the '80s – were displayed (Tribunal de grande instance de Paris, Chambre civile 3, 14 November 2007, 06/12982). The artist sued both Peugeot and the company responsible for the showroom on grounds of copyright infringement. The defendants argued that they had reproduced the original figures from the videogame and not Invader's artwork. The Court of Paris found that Invader's ceramic tiles mosaics were original and therefore protected by copyright but that in the specific case Peugeot had not infringed his copyright since the reproductions exhibited at the show room were in plexiglass.
- 25 See the webpage of the Le Journal des Arts of 22 January 2021 at <https://www.lejournaldesarts.fr/actualites/le-street-artist-combo-deboute-de-son-action-contre-melenchon-152719>. The company which managed the show room was condemned for economic parasitism instead, as it was found that it had unfairly taken advantage of the artist's reputation. It is interesting to note that the court held that Invader's tiles were original despite drawing on the famous videogame image. What also gave the mosaic tiles originality – added the court – was the artist's choice of the place where to glue them.

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