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In a recent judgment concerning long running TV show Only Fools and Horses the IPEC have ruled that copyright can subsist in a fictional character. IP Litigation associate Fergus Brown discusses the recent ruling here.

This time next year we'll be millionaires? ... Only Fools and Horses ruling establishes copyright in characters.

In the recent case of [Shazam v Only Fools The Dining Experience and Others \[2022\] EWHC 1379 \(IPEC\)](#) the IPEC ruled that copyright could subsist in a fictional character considered a 'literary work' under UK copyright law.

The case concerned the character Derek 'Del Boy' Trotter from the long-running TV series Only Fools and Horses in respect of a copyright infringement claim brought by Shazam, (the family company of John Sullivan the creator of Only Fools and Horses who died in 2011) the owner of the IP rights relating to Only Fools and Horses.

The claim was brought against the creators of the "*Only Fools The (cushty) Dining Experience*" an interactive dining/pub quiz experience created in 2018 wherein actors adopt the appearance, mannerisms and catchphrases of well-known characters from the show (including Del Boy).

In addition to copyright infringement in respect of the show's script and opening theme song, Shazam claimed that its copyright in the Del Boy character had been infringed. Copyright relating to fictional characters is a topic that is, at most, a rarity in copyright infringement cases. This was noted by John Kimbell Q.C. sitting as a Deputy High Court Judge stating "*There is surprisingly little discussion in English case law or commentary on whether (and if so in what circumstance) copyright might subsist in a character from a dramatic or literary work*".

In order to reach a ruling on this matter the Judge had to consider two principal questions:

1. Could copyright subsist in the character of Del Boy thereby protecting it as a piece of literary work?; and
2. If so, would the defences of parody or pastiche apply?

In addressing the first question the Judge, applied the two-stage test previously established by the Court of Justice of the EU in its Cofemel judgment (available [here](#)) and ultimately held that 'Del Boy' was an original creation of John Sullivan and was not "*a stock character or cliché of a working-class market trader but is rather a fully rounded character with complex motivations and a full backstory*".

The Judge found that Del Boy was a multi-layered character and drew attention to specific attributes such as Del Boy's aspiration (yet consistent failure) to achieve sophistication; the relationship with his brother Rodney; his catch-phrases and his use of mangled French. Whilst the Judge admitted that each of these characteristics would be unlikely to achieve sufficient distinctiveness in isolation it

July 2022

was held that, when combined, they create an identifiable and distinctive character. The Judge also found that both Del Boy and the key characteristics associated with him were “*precisely and objectively discernable in the Scripts*”. For these reasons the Judge found that the character of Del Boy would be protected by UK copyright law as a piece of literary work.

The defendants sought to rely on the defence of parody and pastiche to exempt them from copyright infringement in respect of the Del Boy character. This argument was rejected by the Judge stating that, in addition to there having been no fair dealing by the defendants, a “*mere imitation (of a work of comedy) is not enough to constitute parody*”.

Comment

The true impact of this case on UK copyright law is yet to be fully understood given its novelty and likelihood of appeal. However, it will for now be welcomed by those who write and create fictional characters for film or TV and will provide further comfort that their creations will be protected. It is also a clear warning to those who seek to re-use or impersonate well known or established characters that they could be found liable for copyright infringement.