

# How to 'win' copyright protection in TV programme formats

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- High Court guidance on copyright subsistence in television programme formats
- Emphasises importance of protecting ideas with non-disclosure agreements
- Court willing to take a hard line on abuse of process where claims have failed in other jurisdictions

## What's it about?

The individual behind the claimant company (C) shared an idea for a game show in a meeting with the defendants (D) and a document sent via email. The brief synopsis outlined that contestants would have one minute to complete a challenge to win a prize. When D licensed and broadcast the programme 'Minute to win it', C alleged copyright infringement, passing off, and breach of confidence.

## Why does it matter?

The High Court gave summary judgment dismissing the claim, holding that it was not copyright infringement. For copyright to subsist in a TV programme's format, there must be clearly identifiable features which, taken together, distinguish the programme from others. Here, C's proposal was unspecific and contained commonplace features.

Nor was there an obligation of confidence in the information disclosed. The Swedish courts had dismissed an earlier claim by C under the Swedish Trade Secrets Act. This was held to be the same in substance as the breach of confidence claim. The fact the claimant company was apparently incorporated to bring the claim in the English courts only seemed to exacerbate this as an abuse of process.

The passing off claim was also dismissed. There was no goodwill in C's idea and no risk of misrepresentation as there were material differences between C's idea and the game show licensed by D.

## Now what?

The possibility of protecting a TV programme's format using copyright was not ruled out. To increase the chance of protection, a detailed document should be produced clearly identifying a programme's features, such as filming locations, catchphrases, show length and when to broadcast. Protecting aspects of a programme using other IP rights, such as registering a show's name as a trade mark, is also possible.

The case is also an important lesson in using written confidentiality agreements to protect information.

[\*Banner Universal Motion Pictures Ltd v Endemol Shine Group Ltd and others \[2017\] EWHC 2600 \(Ch\)\*](#)

For further information on this or any other IP related matter please contact [Rachel Cook](#) on 020 7160 3028