

## Catalogues raisonnés: The fine line between responsibility and unreasonable authority

by Jessica GIRAUD

Catalogues raisonnés, sometimes referred to as artist works catalogues, have considerable influence over the art market. Take for example Bob Calle's catalog, which identifies Christian Boltanski's early work. It has become the standard for determining the authenticity of Boltanski's works during sales, studies, and auctions. Calle has even intervened as a Boltanski expert in order to prevent the sale of a counterfeit piece, and then had it extracted from one of his recently published catalogues.

Indeed, the conception of an Artist works catalogue gives the author significant control over the market value of the artist's works. Judges, conscious of the author's power, have attempted to regulate this situation in recent decades. However, if authors ever fear seeing their prerogative subject to a strict liability regime, the specter of civil reinforcement against tends to disappear.

As a rule, jurisprudence happily supports the skills and knowledge of the catalogue's author. The presence or absence of a work in the catalogue raisonné is almost always taken into account by a judge. Consequently, when a work appears in the catalogue and is authenticated by the author as an original, a buyer or seller who tries to refute the author is unlikely to see his appeal yield a positive result. When the author doubts the legitimacy of a work, and expresses this by placing the work in a separate chapter entitled "Works Not Selected" or "Works Attributed", or if the piece is identified within the body of work under a separate typography, the author's liability cannot, under pre-existing decisions, be engaged by a disgruntled collector. Such was the case during the dispute between an art dealer and the author of Fragonard's catalogue raisonné concerning the authentication of one of the master's drawings (Tribunal de Grande Instance Paris February 21, 1976).

Does this mean the author of a catalog raisonné is absolutely exempt from any risk? The answer merits qualification in view of recent developments in case law.

The right of a catalogue raisonné's author to present the artist's work in their own manner is certainly recognized under the law "freedom of communication of ideas and opinions" (TGI Paris April 30, 1997). Under the same law, the author may also freely choose not to include certain works. However, this right is recognized up to a certain limit; the author is free to choose his compilation, but will have to answer for any mistakes (CA Paris February 2, 2007).

This issue has been repeatedly tried in court, particularly in a case involving the Wildenstein Institute which states "whatever the freedom the author has to present the works of an artist in a book, the mission is considered inadequate if it can be shown that the choice to exclude a particular work is the result of gross or intentional negligence, in disregard of qualified and recognized opinions, and that the information provided in his book is not only partial but also biased "(Tribunal de Grande Instance Paris September 16, 1999). This ruling, which was backed by a ruling by the Paris Court of Appeals (Paris CA April 19, 2000) in another case

again (!) involving The Wildenstein Institute, aroused fears that a judge might have the power to compel the author of a catalogue raisonné to include, against his will, a work in his book after it was authenticated as a result of forensic examination. In short, the expertise of the specialist is substituted by the committed expert.

Surprisingly (with the help of a few national union experts ...), the courts did not follow. The Court of Appeal of Versailles very clearly expressed its differences from the Parisian first instance rulings, considering it could not impose the expert to say whether the work should or should not be integrated into an artist's catalogue raisonné (in this case: Maurice Vlaminck), by virtue of the "constitutional principle" previously referred to as the freedom to communicate thoughts and opinions.

Simply put, under current law, no ruling from the Superior Court has yet been taken to engage the responsibility of these authors or force them to subordinate themselves to the opinion of legal experts. The judgments rendered in the first instance rulings, referred to above, remain isolated cases. Instead, the Supreme Court intervened in 2005 to quash a decision on an appeal condemning the author of Atlan's catalogue raisonné for knowingly failing to include a work he considered of dubious origin. The Supreme Court stated that the author, in this case Jacques Polieri, had committed no crime nor exhibited any evidence of bad faith or reprehensible levity. This implicitly validates the solution maintained by trial judges who refuse to oblige the authors of a catalogues raisonnés to be comprehensive.

And, finally, what about the catalogue's editor? The Court does not consider the editor legally responsible for the author's decision not to include a work in the book. (CA Paris February 2, 2007). In a word, for now, the authors of Catalogue raisonnés are not exposed to a regime of strict liability. One can see an unusual tolerance by the law, described as discretionary, vis-à-vis the power of experts concerning the financial life of the work.

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