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The creation of satellite websites considered as unfair competition

Domain names do not benefit from a specific protection but the abusive use of domain names can be considered as unfair competition. So ruled the Douai Court of Appeals in a decision[1] commented hereafter.

The facts of the case were as follows:

A tradesman engaged in the online sale of beers and by-products registered a domain name entitled "selection-biere.com".

Shortly thereafter, another company that started a competing business of online sale of beers and by-products registered a domain name entitled "selectionbiere.com".

The owner of the first domain name, claiming notably that the domain name registered by its competitor redirected Internet users to the latter's website "saveur-biere.com", not to its own website "selection-bière.com", initiated proceedings for unfair competition and sought damages.

In a judgment dated October 5, 2011, the Douai Court of Appeals firstly recalled that *"a domain name is not covered by an exclusive right and does not, therefore, benefit from a specific legal protection"*.

The Court of Appeals then inferred from the above that *"the use of such a sign is, therefore, subject to general tort liability governed by Article 1382 of the French Civil Code that requires to demonstrate the existence of unfair competition practices through an excessive use of the freedom to trade by means that infringe the equality of competition"*.

In this specific case, the Court of Appeals held that the owner of the domain name "selectionbiere.com" could

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not be blamed for using that domain name even though it was similar to the domain name “selection-biere.com” that had been previously registered

Indeed, the Court of Appeals noted that these two domain names covered an identical business activity, that the word “selection” described the activity of the website that offers for sale a whole range of products and that the word “biere” described the products offered for sale.

The Court of Appeals considered that neither these two words taken individually nor their combination had a distinctive character in respect of the purpose of the website and that they did not either enable the identification of a particular company.

On the other hand, the Court of Appeals acknowledged that the entry of keywords identical or similar to the words “selection” and “biere” in various search engines (Google, Yahoo, Voilà, MSN, AOL, Altavista, Excite, Alltheweb, Lycos) systematically displayed the websites “selectionbiere.com” and “saveur-biere.com”, but also other related websites (“misterbiere.com”, “in2beers.com”, “mister-biere.com”, “esprit-biere.com”, “couleur-biere.com”, “couleursbieres.com”, “monsieurbiere.com”), all of these websites belonging to the same domain name owner.

These related websites, known as “satellite” websites, did not offer any services but simply displayed a list of links directing Internet users to the main website of the domain name owner.

The Court of Appeals recalled that search engines rank websites according to their popularity and that the popularity of a website is determined on the basis of the number of links directing Internet users to such website.

Consequently, the Court of Appeals held that the referencing technique that consists in creating satellite websites for the sole purpose of automatically redirecting Internet users to the website that the domain name owner wants to gain popularity, was to be considered as an unfair competition practice as it misled search engines on the quality of a webpage or website in order to obtain, through the use of a keyword, a good ranking on the search engine results pages.

In the commented case, the Court of Appeals ruled that the owner of the domain name “selectionbiere.com”, by registering multiple domain names with the same keyword, had favored the creation of links directing Internet users to its main website and making such website appear on top of search engines results pages. As such, the Court of Appeals found that the owner had engaged into unfair competition by preventing the plaintiff – who operated in the same business segment – from getting visitors on its website.

Consequently, the owner of the satellite websites was ordered to shut down these websites and to pay to the plaintiff the sum of 10,000 Euros to compensate for the commercial and moral harm it suffered as a result of the unfair competition practice.

This judgment is noteworthy because, to our knowledge, it is the first time that the creation of satellite websites is considered as unfair competition by French courts.

[1] *Court of Appeals of Douai, October 5, 2011, n°10/03751, ch.1 sect. 2, SARL Saveur bière c/ Schott*

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