

*WARNING: Whilst the following translation of the official publication of the Court reflects the spirit and intention of the judgement, it is of course the original document in French that is uniquely pertinent to the interpretation or resolution of any legal point whatsoever arising from the judgement.*

IN THE NAME OF THE FRENCH PEOPLE

THE DISTRICT COURT OF GRASSE

**DEPARTMENT OF SUMMARY PROCEEDINGS**

**JUDGEMENT, 24 February 2010**

**Bruno DRAILLARD, S.A.R.L. CANNES ACCOMMODATION, S.A.R.L.CANNES ACCOMODATION REAL ESTATE versus Lao Michael WATSON-SMITH, Victoria Jane HALLAT spouse of WATSON-SMITH**

**DECISION N°: 2010/206**  
**RG N° 09/01541**

At the public hearing of summary proceedings held on 27 January 2010

We, Marie-Laure GUEMAS, First Vice-President of the District Court of GRASSE, assisted by Barbara BERTELOOT, Clerk of the Court, pronounced the decision the terms of which are as follows:

**BETWEEN:**

**Monsieur Bruno DRAILLARD**

2 rue Lafayette  
06400 CANNES

**S.A.R.L. CANNES ACCOMMODATION**

2 rue Lafayette  
06400 CANNES

**S.A.R.L. CANNES ACCOMODATION REAL ESTATE**

2 rue Lafayette  
06400 CANNES

*represented by the SCP SOPHIA LEGAL SOCIETE D'AVOCATS, barristers at the bar of GRASSE*

**AND:**

**Monsieur Lao Michael WATSON-SMITH**

57 boulevard du Moulin

06400 CANNES

*represented by Maître Gérard ROMAIN, barrister at the bar of GRASSE*

**Madame Victoria Jane HALLAT spouse of WATSON-SMITH**

Résidence Anthinéa

8 Avenue de la reine Astrid

06400 CANNES

*represented by Maître Gérard ROMAIN, barrister at the bar of GRASSE*

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The parties to the public hearing held on 27 January 2010 were advised that the public pronouncement of the decision would be effected by making it available at the Office of the Clerk to the Court on 24 February 2010.

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## **STATEMENT OF THE FACTS, THE PROCEDURE AND THE CLAIMS OF THE PARTIES**

On 17 July 2001, Bruno DRAILLARD obtained the domain name “Cannes-accomodation.com”. On 17 August 2001, he was registered in his own name in the companies’ register in Cannes as renter of furnished premises under the business name “CANNES ACCOMODATION”. On 11 June 2004, he created the company CANNES ACCOMODATION integrating his commercial name into the name of the company.

Bruno DRAILLARD and his companies have as activity the renting of furnished premises mainly in Cannes and today operate the site corresponding to the address [www.cannes-accomodation.com](http://www.cannes-accomodation.com).

They declare that, at the end of the month of November 2008, they noticed that a deluge of negative comments concerning them had been posted in English on the site Google Maps, under various anonymous pseudonyms; that they were obliged to delete these postings and recreate the Google account to ensure that the opinions disappeared; that at the end of December 2008, they observed that a new person, writing under the pseudonym “RINGO THE GRINGO”, had posted on the Google Internet site a new unfavourable opinion in English concerning their activities; that they succeeded in identifying the IP addresses in contention as belonging to Mme WATSON-SMITH ; that Bruno DRAILLARD had Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH summoned, by act of huissier<sup>1</sup> dated 23 July 2009, to appear before the President of the DISTRICT COURT OF GRASSE, for the purpose of:

\* ordering them jointly and severally to delete the contentious opinions on the Google site within 24 hours of the notification of the ruling, under penalty of €500 for each day of delay;

\* ordering the defendants to immediately cease all use of the business name and denomination “CANNES ACCOMODATION” however spelt and of all similar terms, by any procedure whatsoever and in particular on their Internet sites, in their advertising on this site and / or in the links appearing on their site, under pain of penalty of € 3500 for each breach observed;

\* ordering the publication, at the charge of the defendants, of the terms of the ruling in two newspapers to be chosen by the plaintiffs, subject to the cost of each insertion not exceeding the sum of € 2500;

\* ordering the publication of the terms of the ruling on the Home page of the sites of Mr WATSON-SMITH, “everything-cannes.com” and “azur-online.com”, within the 10 days following notification of this ruling and for a period of 30 days, under pain of penalty of €100 for each day of delay.

They also demand that the defendants be condemned to pay compensation of € 2000 in accordance with the provisions of Article 700 of the Law relating to Civil Procedure, together with the costs concerning the expenses of the certified statements dated 25 March and 28 May 2009 and the charges for the notification of the rulings of the summary proceedings to Google and to France Telecom.

The affair was notified for hearing on 27 January 2010.

Bruno DRAILLARD and his companies accuse Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH of denigration constituting an act of unfair competition and the illegal use of the brand CANNES ACCOMODATION, in two words placed together and not separately, in order to capture part of their clientele.

In support of their claims and in response to the arguments put forward by the defence, they assert that:

- the defendants do not contest the illegal use of the commercial name. Whilst the three companies AZUR ESTATE AGENTS, EVERYTHING CANNES and AZUR ONLINE France do indeed appear in the summons, the demands in fact concern Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH in their personal capacity; Madame WATSON-SMITH in her capacity as holder of the France Telecom account from where the opinions were published and Monsieur since he admitted during the police hearing on 3 July 2009 being the author of the opinions; moreover they are both directors of the three companies
- the documents they have submitted to the court demonstrate the attempt by Monsieur WATSON-SMITH to hide behind shell companies, specifically set up for this purpose in particular in England; their bad faith is obvious
- it has always been a feature of jurisprudence that denigration of a competitor constitutes an act of unfair competition; it has been established that Madame WATSON-SMITH broadcast on-line on Internet opinions that can be read throughout the whole world, denigrating Bruno DRAILLARD and his companies, and this under false names and therefore in an anonymous manner; she cannot justify herself by stating without any evidence whatsoever that her computers are accessible to everyone
- a violation of law by a third party violating their rights does not constitute by its nature a validation or a justification of their violation; CANNES ACCOMODATION is certainly a brand and not a denomination
- a simple reading of the negative opinions in their regard, attributing to them various forms of dishonest behaviour, results in a bad image thus causing them commercial prejudice
- they cannot delete the opinions in contention on their own initiative
- Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH cannot seriously contend that they are not the author of the opinion posted on 25 November, which was of a substantially stronger nature than the other messages
- to attempt to justify their acts, the defendants finally accuse Bruno DRAILLARD of threatening them, which is false, Monsieur WATSON-SMITH not having hesitated to continue to denigrate Bruno DRAILLARD by again making slanderous accusations about him.

They request full and total acceptance of their submissions in introductive proceedings.

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*Here a number of paragraphs of the Judgement, which are not of general interest, have been omitted in this English version, so as to provide the reader with only those parts of the judgement likely to be of interest to him. These paragraphs are available on the French version of this judgment.*

## GROUNDS FOR THE DECISION AND THE DECISION

It is accepted that on 17 July 2001, Bruno DRAILLARD obtained the domain name “Cannes Accomodation.com”; that on 17 August 2001, he was registered in his own name in the CANNES companies’ register as renter of furnished premises under the business name “Cannes Accomodation”; that on 11 June 2004, he created the company CANNES ACCOMODATION integrating his business name into the name of the company. Bruno DRAILLARD and his company have as activity the renting of furnished premises mainly in Cannes and today operate the site corresponding to the address [www.cannes-accomodation.com](http://www.cannes-accomodation.com).

Bruno DRAILLARD justifies having deposed the brand CANNES ACCOMODATION at the INPI PARIS on 9 December 2008. The registration of this brand was published in the *Bulletin Officiel de la propriété industrielle* (Trademark Register) under the N° 0920 vol. II, dated 15 May 2009.

The companies AZUR ESTATE AGENTS, EVERYTHING CANNES and AZUR ONLINE France were created respectively on 21 July 2005, 14 November 2005 and 3 April 2006.

### 1. Concerning the receivability of the demands formulated by Bruno DRAILLARD with regard to Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH:

Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH request their relax, claiming that the action should in fact be brought against the companies AZUR ESTATE AGENTS, EVERYTHING CANNES and AZUR ONLINE France.

Whilst these three companies are cited in the accusation, it cannot seriously be contested that the demands are expressly aimed at Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH in their personal capacities. Thus, Victoria WATSON-SMITH is cited in her capacity as holder of the French Telecom account used for the publication of the opinions and Lao WATSON-SMITH is cited for what he recognised, at the time of his interrogation by the police on 3 July 2009: “having written some of the messages putting the company of Monsieur DRAILLARD in an awkward position, but obviously not all of them; that which has been identified, it is certainly me, I did it in a moment of anger following threats on his part...”

Moreover, Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH are in effect the directors of these companies, as is demonstrated by all the documents produced by the plaintiffs and Bruno DRAILLARD has also directed his action against them in their personal capacities.

Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH cannot seriously contend that they are not the owners of the sites cited in the accusation

The claim of inadmissibility will be purely and simply set aside.

### 2. Concerning the denigration:

In the terms of a temporary injunction dated 23 February 2009, the President of the District Court of Grasse ordered Google to transmit to Bruno DRAILLARD the information necessary for the identification of the author of the opinions in contention posted at the end of November 2008 and at the end of December 2008. That company transmitted the information in its possession and in particular the IP addresses, attributed by France TELECOM (ORANGE) to its clients, of the people having posted the opinions in contention. Duly authorised by a ruling dated 16 March 2009, France TELECOM identified the IP addresses in contention as belonging indisputably to Madame WATSON-

SMITH (see correspondence addressed to the mandated huissier de justice<sup>1</sup> by France TELECOM on 6 May 2009).

It has been established in debate in the light of these elements that Madame WATSON-SMITH posted on line on Internet the opinions denigrating Bruno DRAILLARD and his companies, under a false name and therefore in a way that was anonymous but able to be read by all Internet users throughout the world.

She recognises that at least 3 of the opinions were posted from her computers. She claims, without demonstrating the fact, that her computers are accessible to all. She is in any case responsible for the use of the IP address which belongs to her.

A violation in law by third parties of the rights of the plaintiffs cannot justify the violation that she has therefore committed.

The opinions published, insinuating that Bruno DRAILLARD and his companies adopted dubious practices vis-à-vis their clients, are undeniably harmful to their reputation.

Lao WATSON-SMITH, operating through various companies, is undeniably a direct competitor of the plaintiffs. He had a reason for publishing defamatory messages concerning Bruno DRAILLARD. Moreover, his e-mail address [laowsmith@hotmail.com](mailto:laowsmith@hotmail.com) was provided by Google as being the reference address for the opinions in contention.

Concerning the opinion dated 25 November 2008, posted under the pseudonym “Franklin”, the terms of which are strong, France TELECOM confirmed on 23 November 2009 that the said opinion did indeed originate from the Internet address of the domicile of Lao WATSON-SMITH at 57 bld des Moulins in Cannes. He can as a result raise no objection whatsoever.

The facts of denigration that can be imputed to Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH being established; they constitute an act of unfair competition and engage the responsibility of their authors on the basis of Article 1382 of the Civil Code.

The deletion of the opinions cannot a priori be undertaken by one or other of the parties. Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH admit in their written submissions that, in the e-mail from Google dated 24 November 2009, it was stated to them that the deletion of the existing messages was possible on condition that a copy of the judgement demanding the deletion of the messages concerned was communicated to Google. Bruno DRAILLARD had to delete his account on Google in order to make the opinions disappear.

### 3. Concerning the illegal use of the logo and of the business name

Any person whatsoever indisputably has the right, in the terms of jurisprudence ruled as a precedent by the Court of Appeal, to protection for his business name and any business company whatsoever has the right to claim protection for its identity and to prevent the usurping of its business name.

The brand CANNES ACCOMODATION deposited by Bruno DRAILLARD also enjoys the benefit of protection.

The matter in dispute is the illegal use of the terms CANNES ACCOMODATION placed together and not used separately, with the unique aim of attempting to capture a part of the plaintiffs' clientele.

It has been demonstrated that Monsieur WATSON-SMITH uses the business name and the denomination CANNES ACCOMODATION on his Internet site, as paying keywords for

advertisements on a number of search engines, as keywords for the referencing of his Internet sites and in the link addresses associated with his Internet sites.

He cannot contend that the term is being used as an ordinary English word. The expression is used solely because it corresponds to the denomination of Bruno DRAILLARD and his companies.

The use by Monsieur WATSON-SMITH of the business name, whilst he exercises an identical activity in the same geographical area, sows seeds of confusion in the minds of users of the sites, who are likely to believe they are in contact with the plaintiffs and not with a competitor company and constitutes an act of unfair competition.

It constitutes a disturbance that is manifestly illegal in the sense of Article 809 of the Law relating to Civil Procedure and which should be terminated.

As a result, it is agreed to accede to the demands formulated by Bruno DRAILLARD in the terms of the measures of the present judgement.

4. Concerning the defendants' counterclaim:

The demand aimed by Mr Watson Smith at ordering deletion of the name "WATSON-SMITH", the address "13 rue Pasteur" and the IP address "86.200.140.144" from the opinions formulated by Bruno DRAILLARD on the CANNES ACCOMODATION site is unfounded.

5. Concerning the application of Article 700 of the Law relating to Civil Procedure

It would be unfair to leave the totality of the costs of the Plaintiffs' representatives to the account of Bruno DRAILLARD in the context of the present instance. The plaintiffs will be allocated compensation of 1500 euros on the basis of Article 700 of the Law relating to Civil Procedure.

On the other hand, no consideration of equity dictates the allocation of compensation in application of this text to the defendants whose arguments have been dismissed in the proceedings.

6. Concerning the costs

It follows from Article 491 of the Law relating to Civil Procedure that the judge in summary proceedings rules on costs, the Appeals Court having decided that such is an obligation.

Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH, whose arguments have been dismissed in the proceedings, will bear the costs.

**ON THESE GROUNDS**

We, Marie-Laure GUEMAS, First Vice-President of the District Court of GRASSE, judge in summary proceedings, ruling by ordinance in the presence of the parties, in first instance, made available at the Clerk of the Court's office,

All rights and arguments of the parties remaining reserved, on the principal send the parties to appeal as they may decide, but already in application of Article 809 of the Law relating to Civil Procedure and 1382 of the civil code,

Declare Bruno DRAILLARD, the SARL CANNES ACCOMODATION and the SARL CANNES ACCOMODATION REAL ESTATE well-founded in their demands directed against Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH in their personal capacity;

Order Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH jointly and severally to delete the contentious opinions “Ringo the Ringo 24/11/08, Wayne 24/11/08, Franklin 25/11/08 and Ringo the Gringo 26/11/08, under any pseudonym whatsoever, from the Google site, within 24 hours of the notification of the present ruling, under pain of penalty of €500 for each day of delay, during a period which begins after an interval of one month from notification of the present ruling, and continues for two months, beyond which time there can again be a ruling on the matter.

Order the defendants to cease, with immediate effect, any use whatsoever of the business name and denomination “CANNES ACCOMODATION”, in any spelling whatsoever, or of any similar term whatsoever, by any procedure whatsoever and in particular on their Internet sites, their advertisements, this advertisement and / or in the address of links appearing on their site, under pain of penalty of €1000 for each breach identified and served by huissier<sup>1</sup> designated by ordinance in summary proceedings;

Order the publication of the provisions of the present ruling in two newspapers chosen by the plaintiffs, at the charge of Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH, subject to the cost of each insertion not exceeding the sum of €2500;

Order the publication of the provisions of the present ruling on the Home page of the sites of M. WATSON-SMITH, “everything-cannes.com” and “azur-online.com”, within the 10 days following notification of this ruling and for a period of 30 days, under pain of penalty of €100 for each day of delay for two months after which delay the matter can again be ruled on

Condemn *in solidum* Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH to bear and to pay to Bruno DRAILLARD compensation of €1500 in application of Article 700 of the Law relating to Civil Procedure;

Declare that there is no case for the application of Article 700 of the Law relating to Civil Procedure in favour of the defendants;

Declare that there is no case in summary proceedings for the other matters;

Condemn Lao WATSON-SMITH and Victoria HALLAT spouse of WATSON-SMITH to the payment of all costs, including the costs of the certified statements dated 25 March and 28 May 2009 and the costs of notification of the rulings in summary proceedings to Google and France Telecom.

So ruled and pronounced in public audience of summary proceedings at the Palais de Justice (courthouse) of GRASSE

Signed by:

**THE CLERK OF THE COURT**

**THE PRESIDENT**

<sup>1</sup> a member of the legal profession whose responsibility includes formally bearing witness to events or situations (*constat d'huissier*); *signification*, a form of service of process; making the decisions of the courts available to the public; and execution of the courts' decisions, such as seizures and evictions.