

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 THE *JUGE D'EXECUTION*<sup>1</sup>**

**Bruno DRAILLARD, S.A.R.L. CANNES ACCOMMODATION, S.A.R.L.CANNES  
ACCOMODATION REAL ESTATE  
versus William LECERF, CF INVEST S.A.R.L.**

**JUDGEMENT, 07 July 2009**

**DECISION N°: 2009/312  
RG N° 09/00254**

**APPELLANTS:**

**Monsieur Bruno DRAILLARD acting in person in the name of CANNES  
ACCOMMODATION  
2 rue Lafayette  
06400 CANNES**

represented by Maître Jean-Paul MANIN barrister at the bar of GRASSE

**S.A.R.L. CANNES ACCOMMODATION  
2 rue Lafayette  
06400 CANNES**

represented by Maître Jean-Paul MANIN barrister at the bar of GRASSE

**S.A.R.L. CANNES ACCOMODATION REAL ESTATE  
2 rue Lafayette  
06400 CANNES**

represented by Maître Jean-Paul MANIN barrister at the bar of GRASSE

**RESPONDENTS:**

**Monsieur William LECERF  
CANNES HOUSE RENTALS  
28 avenue Beauséjour  
06400 CANNES**

represented by Maître Richard SIFFERT, barrister at the bar of GRASSE

**SARL C F INVEST**  
28 avenue Beauséjour  
06400 CANNES

represented by Maître Richard SIFFERT, barrister at the bar of GRASSE

## **COMPOSITION OF THE COURT**

President: Madame Chantal BARON, Senior Vice-President

Registrar: Madame Françoise CHAUSSE, Registrar

## **PROCEEDINGS**

The parties present at the public hearing on 09 June 2009 were informed that judgement would be pronounced on 07 July 2009 by making a copy of the judgement available at the Office of the Clerk to the Court

## **JUDGEMENT**

Pronounced by making a copy available at the Office of the Clerk to the Court.  
Judgement rendered in the presence of the parties involved  
Judgement in the first instance

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## **Presentation of the litigation**

By Order in summary proceedings made on 08 October 2008 by the District Court of Grasse, at the demand of Bruno DRAILLARD, S.A.R.L. CANNES ACCOMMODATION and S.A.R.L. CANNES ACCOMMODATION REAL ESTATE against William LECERF and CF INVEST SARL, the latter parties were ordered to cease immediately all use of the commercial name and denominations “CANNES ACCOMMODATION” or “CANNES ACCOMMODATIONS” or of any similar terms whatsoever, by any procedure whatsoever, and in particular on their Internet site, in their advertising or as keywords for publicity or for referencing, on pain of the application of a penalty of €1 500 for each breach committed.

The same decision ordered publication of the ruling in two newspapers selected by the Appellants at the expense of the Respondents provided that the cost of each insertion does not exceed the sum of €2 500, and on the Home Page of the site “cannes-house-rentals.com” for a period of ten days, on pain of a penalty of €1 000 for each breach committed.

By act dated 22 December 2008, Bruno DRAILLARD, S.A.R.L. CANNES ACCOMMODATION and S.A.R.L. CANNES ACCOMMODATION REAL ESTATE arraigned William LECERF and CF INVEST SARL before the *Judge d’Execution*<sup>1</sup> of the District Court of GRASSE to obtain payment of the sum of € 22 500, representing 15

breaches confirmed by *huissier de justice*<sup>2</sup> of the above ruling, and to ask for a new penalty of €1 500 for each day of delay in settlement of the payment.

Bruno DRAILLARD, S.A.R.L. CANNES ACCOMMODATION and S.A.R.L. CANNES ACCOMMODATION REAL ESTATE demand in addition the payment of a sum of €1 500 in accordance with the provisions of Article 700 of the Law governing Civil Procedures.

They submit that it has been certified by *huissier de justice*<sup>2</sup> on five occasions that the Respondents have continued to use the terms Cannes Accommodation, on certain pages of their Internet site, as paid key-words used for search purposes on the system of paid announcements of the Google search engine and as free of charge key words for referencing in the source codes of the Internet site. Each of these three offences were recorded in many places on the site in question on each of the five occasions certified by *huissier de justice*<sup>2</sup>, thereby representing 15 breaches in total.

The Respondents oppose these demands, asserting that an extraneous cause prevented execution of the ruling; that in fact, desirous of making the changes himself on his site, and believing, in good faith, that the words no longer appeared; that it was only on being served with the notification of the five occasions certified by *huissier de justice*<sup>2</sup> previously mentioned that he was able to see that the words that are the subject of the present litigation remained on the site, right at the bottom of the page, on the search page of the Google search engine and in the source codes of the site; that he then asked a computer company to make the necessary modifications; that, in the case of the Google search engine, a delay is necessary before the suppression of certain words, figuring in the key words and in the source codes, is registered in the memory.

They submit, as a consequence, that, taking into account their good faith, the daily penalty be suspended or at least reduced.

They demand the dismissal of all the appellants' claims and their condemnation to pay the sum of €1500 as provided by Article 700 of the Law relating to Civil Procedures.

#### **GROUNDS FOR THE RULING**

##### **- Concerning application of the daily penalty**

Legally, Article 36 of the law dated 09 July 1991 provides that the amount of the penalty is applied, taking into account the behaviour of the person to whom the injunction was addressed and the difficulties encountered by that person to obey the injunction. The provisional penalty can be suppressed in whole or in part if it is established that the failure to obey or the delay in obeying the ruling of the judge results in whole or in part from an extraneous cause. The notion of extraneous cause must be understood to mean force majeure, the fault of a third person, the fault of the victim, the loss of the thing by act of God, or restraint of princes, which must in principle be insurmountable and unforeseeable;

Furthermore it is the responsibility of the person under the obligation of complying with the ruling to provide the proof that the ruling has been complied with, or to demonstrate the existence of an extraneous cause which has prevented compliance with the ruling;

In the present instance, it is clear from the five occasions confirmed by *huissier de justice*<sup>2</sup> on the 22, 28 and 30 October 2008 and 03 and 06 November, that the forbidden expressions could still be found on the Respondents' Internet site subsequent to the notification of the ruling handed down in summary proceedings on 17 October 2008;

William LECERF and CF INVEST SARL cannot benefit from exoneration of application of the penalty by invoking their lack of technical competence since this does not constitute an extraneous cause. Indeed, it is their responsibility to make sure that the modifications made to the site are effective, if necessary by calling on the services of a professional, which in fact they did, subsequent to receiving notification of the facts certified by *huissier de justice*<sup>2</sup> referred to previously;

Furthermore, it is not relevant that a delay is necessary before the Google search engine makes effective the suppression of certain information on the sites, since the breaches certified by *huissier de justice*<sup>2</sup> significantly precede the change carried out by the computer company on the key words and source codes of the site. All parties agree that the modifications were indeed made on 25 and 26 November 2008, whereas the last breach was established and certified by *huissier de justice*<sup>2</sup> on 6 November 2008.

Nor is it relevant that certain uses of the expressions in contention were not accessible at first sight on the site, since the judgement prohibited all use of these words, in any way whatsoever, and in particular as key words for publicity or referencing;

Lastly, it is to be noted that the ruling in summary proceedings fixed a penalty of €1500 for each offence established for “all use” of the words in contention, so that it is with good reason that the Appellants demand application of the penalty for each type of use of the words in contention, (on the page of the site, as paid key words for search purposes or as key words free of charge for referencing purposes), and for each of the five certified reports by *huissier de justice*<sup>2</sup>, which in all represent 15 breaches;

The penalty having been fixed provisionally, in consideration of the fact that the ruling was finally executed it is appropriate that the amount be modified, by fixing the amount at €20 000 and condemning William LECERF and CF INVEST SARL to payment of this sum;

- Concerning the fixing of a new penalty

The judgement having been executed by modification of the site, the request to fix a new definitive penalty is without point and could only be granted following a new judgement by the *juge de fond*<sup>3</sup>, establishing a modification of the site to use once again the words in contention;

- Concerning the other requests

It appears unfair to leave the totality of the costs of the Appellants’ representatives to the account of Mr Draillard and sarl Cannes Accommodation in the present instance. It is therefore decided to grant them the sum of €1 500 in this respect.

## **ON THESE GROUNDS**

The *juge d’execution*<sup>1</sup>, ruling in the presence of the parties involved, in the first instance, enforceable in the interim and made available at the Office of the Clerk to the Court, Applies the penalty, for account of William LECERF and CF INVEST SARL, pronounced by summary judgement handed down on 08 October 2008 by the District Court of GRASSE, at

the amount of € 20 000, and condemns William LECERF and CF INVEST SARL to the payment of this sum,

Furthermore, condemns William LECERF and CF INVEST SARL to pay to Bruno DRAILLARD, S.A.R.L. CANNES ACCOMMODATION and S.A.R.L. CANNES ACCOMODATION REAL ESTATE the sum of €1 500 in application of Article 700 of the Civil Procedures Law,

Dismisses all other demands of the parties,

Confirms that the present ruling is enforceable by right by application of Article 30 of the Decree dated 31 July 1992,

Orders William LECERF and CF INVEST SARL to pay the costs of the hearing.

And the present judgement was signed by the President and the Clerk to the Court.

THE CLERK TO THE COURT,

*Legal signature*

THE PRESIDENT,

*Legal signature*

<sup>1</sup> Judge competent to decide litigation concerning enforcement of orders rendered by civil courts and other matters.

<sup>2</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.

<sup>3</sup> Judge competent to judge the substance of the case and the law applicable