

## Mark and social name, a double-edged wedding!

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Courts are used to consider the French public as bad students and practitioners in foreign languages, including English.

Nevertheless, the French Court of first instance in Paris, within a judgment dated November 22, 2013, had to decide on the distinctive character of the word mark RENT A CAR registered in 1998 to designate different sorts of cars as well as the related services of renting. Here, judges fortunately took into consideration the kind of public concerned by the activities in case.

As a first step, they confirmed that the name RENT A CAR is an English basic description of the services covered, composed of the very comprehensive word “a”, usual article, and “car” which is one of the first words learned by students at school.

Moreover they retained that even if every French people does not understand “rent”, the public concerned, i.e cars lessees, is mainly composed of drivers that travel outside of their country and need a car from the airport or train station and may have sufficient basis in English language to know the meaning of “rent”.

The fact also that some competitors on the car rental market use or have trademarks with the wording “rent a car” confirms that the trademark was not distinctive when filed.

That did not mean that the trademark should be cancelled, as the question of acquisition of distinctive character through use had to be studied and the point is there: how to evidence it when the mark in case is also the name of the company and of its shops?

Here the company RENT A CAR gave testimonials from the administrative and financial director confirming the expansion of the turnover under the mark RENT A CAR as well as the advertising investments.

Nevertheless, it has been judged that evidences were not sufficient as not related to the mark itself but to the rental turnover of all the agencies or to advertising expenses possibly concerning other trademarks of the company itself. They also noted that the mark used was more the graphic one



The main difficulty is that judges recognized the particular notoriety of RENT A CAR (with only 11% of spontaneous awareness), but for the eponymous company not the mark!

The cancellation of this trademark (which may probably be appealed) shows that the special case when the mark is also the name of the company has to be taken into consideration for the first choice of the name and when establishing the trademark policy.

In fact, it is most imperative to be able to distinguish the use and get related evidences for #1 the word mark, #2 the complex mark including the name associated to a device and #3 the name of the company. That is a reason why special processes have to be integrated to ensure safety of rights.

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