

French Courts start ruling on Google Suggest

Summary: After a very first start bringing to an uncertainty as to the French Court positions, the French case law moves to a second step with an apparent coherence saying that Google's liability applies. On December 4 and December 9, the French Courts actually concurred in finding that Google liability was engaged as to the combination of the plaintive name with the wording "arnaque" (i.e. "rip-off") displayed in the suggestions of Google Suggest.

Two very first judgments of French Courts had been issued in the first half of 2009 but with opposite positions. On May 7, 2009, the Paris Court of First Instance ruled Google's liability whereas the Paris Trade Court upheld on July 10, 2009, that no affront could be inferred towards Google as to the suggestions displayed while performing a search. These initial positions have recently encountered newly issued decisions.

On December 9, 2009, the Paris Court of Appeal confirmed the findings of the decision of the First Instance Court dated May 7, 2009, which accepted Google's liability. The Court of Appeal however infirmed this previous decision as to the measure ordered.

In this matter, Direct Energie complained that a Google search generated "*direct energie arnaque*" (i.e. "direct energie rip-off") as the first suggestion proposed. It was requested before the Court that Google deletes the wording "arnaque" ("rip-off") from the suggestions when "Direct Energie" was typed by internet users. The Court of First Instance actually granted the claim and ordered on May 7, 2009, the removal of the whole expression "*Direct Energie – arnaque*" from the list of suggestions.

The Court of Appeal confirmed that the juxtaposition of a name of a company with the word "*arnaque*" (i.e. "rip-off") was detrimental to the repute and the image of the plaintiff. The Judge however considered that a medium care user would ignore that the proposals appearing through Google Suggest are based on previous inquiries of internet users. He consequently amended the First Instance decision by:

- i) requesting that Google mentions on its home page a general information enabling internet users to understand how is made up the list of suggestions and;
- ii) cancelling the initial order that Google deletes the expression "*Direct Energie – arnaque*" from the list of suggestions.

In a second matter the First Instance Court of Paris upheld on December 4, 2009 that the suggestion "*CNFDI arnaque*" (i.e. "CNFDI rip-off") displayed while searching for the plaintiff's name on Google was an affront under provisions of the law of July 29, 1881, concerning the press freedom.

For the Court, the wording "*arnaque*" was injurious and did not convey any factual information likely to be discussed. Google voluntarily excluded for instance pornographic terms or words leading to violence and invited internet users to report queries which should not be suggested so that the management and control of the database remained in their hands and their responsibility was engaged

This decision takes a total opposite position compared to what the Paris Court of First Instance ruled in the very same matter under a summary and extraordinary proceeding ("Référé") on July 10, 2009 (as stated above). The addition of "*arnaque*" had then not been regarded as an affront because this suggestion relied on evidenced and real results of past searches performed by internet users and was consequently a reliable support for the broadcast of freedom of thought and information.

As the second stage, these decisions concur in finding Google's liability and show less disparity than the very first judgments that happened in France. Our case law is however still to be built up to be fully confirmed. We will monitor the question for sure and will further report accordingly.

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