

*WARNING: Whilst the following translation of the official publication of the Court reflects the spirit and intention of the judgment, 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 judgment.*

**APPEALS COURT OF AIX EN PROvence**  
**15<sup>TH</sup> Chamber A**

**JUDGEMENT IN SUBSTANCE**  
**16 DECEMBER 2011**

**N° 2011/634**

**Decision before the Court:**

Judgement by the Judge of Enforcement of the District Court of GRASSE dated

Rôle N° 10/20878 19 Octobre 2010, registered in the General Repertory under the n° 10/3560.

**APPELLANTS**

Lao WATSON-SMITH  
Victoria HALLATT wife of  
WATSON-SMITH

Monsieur Lao WATSON-SMITH  
domiciled at Résidence Anthinéa - 8 Avenue de la Reine Astrid - 06400 CANNES

Represented by SCP TOLLINCHI VIGNERON TOLLINCHI, solicitors to the court, represented before the court by Me Maud VANDELLI, barrister at the Bar of GRASSE

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Bruno BRAILLARD SARL  
CANNES  
ACCOMMODATION  
SARL CANNES  
ACCOMMODATION  
REAL ESTATE

Madame Victoria HALLATT  
Domiciled at Résidence Anthinéa - 8, Avenue de la Reine Astrid - 06400 CANNES

Represented by SCP TOLLINCHI VIGNERON TOLLINCHI, solicitors to the court, represented before the court by Me Maud VANDELLI, barrister at the Bar of GRASSE

**RESPONDENTS**

Monsieur Bruno DRAILLARD  
Date of birth 08 October 1961 at LE CANNET (06), domiciled at 2, rue Lafayette - 06400 CANNES

Represented by SCP LIBERAS BUVAT MICHOTEY, solicitors to the court, represented before the court by Me Jean-Paul MANIN, barrister at the Bar of GRASSE

SARL CANNES ACCOMMODATION in the person of its appointed legal representative domiciled at 2 Rue Lafayette - 06400 CANNES

Engrossement

delivered on:  
to SCP TOLLINCHI -  
PERRET-VIGNERON - B  
ARADAT -BUJOU-  
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SCP LIBERAS - BUVAT -  
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Represented by SCP LIBERAS BUVAT MICHOTEY, solicitors to the court, represented before the court by Me Jean-Paul MANIN, barrister at the Bar of GRASSE

**COMPOSITION OF THE COURT**

The case was heard on **02 Novembre 2011** , in public audience, before the Court made up

of:

Madame France-Marie BRAIZAT, President  
Monsieur Christian COUCHET, Advisor  
Monsieur Olivier BRUE, Advisor

who deliberated before arriving at the decision.

**Clerk to the Court for the hearing: M. Alain Vernoine.**

The parties 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 16 December 2011.

**JUDGMENT**

In the presence of the parties involved

Pronouncement effected by making it available at the Office of the Clerk to the Court on 16 December 2011

Signed by Madame France-Marie BRAIZAT, President and M. Alain Vernoine, Clerk to the Court, to whom the record of the decision was remitted by the signing magistrate.

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

In 2001 Monsieur DRAILLARD obtained the domain name “cannes- accomodation.com”.

He was registered in his name as renter of furnished premises under the business name “CANNES ACCOMODATION” and, in 2004, created the company CANNES ACCOMODATION.

Monsieur DRAILLARD and his company, whose activity is the renting of furnished premises, operate the site corresponding to the address [www.cannes-accomodation.com](http://www.cannes-accomodation.com) and are holders of the commercial brand name “CANNES ACCOMODATION” registered at the INPI PARIS (*Trademark Register*).

In 2008, Monsieur DRAILLARD and his company noticed that many negative comments concerning them had been posted in English on the site Google Maps, under various anonymous pseudonyms: “Ringo the Gringo”, “Wayne” etc...

After identification of the authors of the contentious comments as being the married couple Mr and Mme WATSON- SMITH, the Respondents obtained, on 24 February 2010, a summary judgment handed down by the Judge for Summary Proceedings of the District Court of Grasse, which in particular:

- ordered Mr and Mme 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 said summary judgment, under pain of penalty of €500 for each day of delay, during a period which will begin after an interval of one month (*from notification of the said summary judgment, and will continue for two months*), beyond which time there can again be a ruling on the matter,

- ordered Mr and Mme WATSON- SMITH 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 certified by huissier<sup>1</sup> designated by ordinance in summary proceedings,

- ordered the publication of the provisions of the present ruling in two newspapers chosen by the plaintiffs, at the charge of Mr and Mme WATSON- SMITH, subject to the cost of each insertion not exceeding the sum of €2500,

- ordered 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

- ordered Mr and Mme WATSON- SMITH to pay to Monsieur DRAILLARD the sum of €1.500 in application of Article 700 of the Law relating to Civil Procedure and to pay 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.

As a consequence of this decision, Monsieur DRAILLARD and the companies CANNES ACCOMODATION and CANNES ACCOMODATION REAL ESTATE arranged that notice be served on Mr and Mme WATSON- SMITH on 03 June 2010 to pay the sum of €6,028.36.

It is in this situation, that Mr and Mme WATSON- SMITH, who contested that they owed the sum demanded, assigned Monsieur DRAILLARD and the companies CANNES-ACCOMODATION and CANNES ACCOMODATION REAL ESTATE, by legal notification dated 11 June 2010, before the Judge for Enforcement of the District Court of Grasse for voidance of the order to pay.

They claimed that:

- the defendants not having respected the terms of the ruling in summary proceedings of 24 February 2010 by:

\* publishing a text carrying their own comments in the newspapers "L'AVENIR COTE D'AZUR" and "NICE MATIN",

\* having published two inserts in the daily newspaper "NICE MATIN",

- the costs relative to the notification of the ruling on the petition to FRANCE TELECOM, acts in course of notification, were not due.

They made the point that publication of the provisions of the ruling had been accompanied by comments.

Monsieur DRAILLARD and the companies CANNES-ACCOMODATION and CANNES ACCOMODATION REAL ESTATE sought, by counterclaim, settlement of the penalties applicable.

By judgment dated 19 October 2010, the Judge for Enforcement:

- annulled the record of the seizure and sale of 03 June 2010,

- fixed the penalties at the sum of €40,000 as at the day of the ruling and condemned Mr and Mme WATSON- SMITH to payment of this sum,

- included in the obligations imposed on Mr and Mme WATSON- SMITH by the ruling in summary proceedings of 24 February 2010 a new penalty of €50 by day of delay with effect from the date of notification of the decision,

- condemned Mr and Mme WATSON- SMITH to pay €2,000 in application of Article 700 of the Law relating to Civil Procedure.

Mr and Mme WATSON- SMITH lodged an appeal against this decision.

In conclusions notified on 18 March 2011, they ask the Court:

*in limine litis,*

- to declare without foundation the convictions imposed on Madame HALAT, the spouse of Mr WATSON- SMITH, who exercises no professional or commercial activity and on Monsieur WATSON-SMITH given that he exercises no professional activity other than that of SARL Azur Online,

**concerning the substance,**

- to reverse the decision of the Judge of Enforcement of the District Court of Grasse dated 19 October 2010 but only inasmuch as he imposed a penalty of a sum of €40,000 on the appellants, and inasmuch as he pronounced condemnation for a sum of €2,000 in application of Article 700 of the law relating to civil procedure,
- to record that Monsieur WATSON and Madame HALAT have respected the obligations imposed on them by the summary judgment dated 24 February 2010,
- to record that in any event the obligation relating to the non-utilization of generic terms devoid of protection on an internet site was without foundation,

**additionally,**

- to reduce to more equitable proportions the amount of the daily penalty pronounced by the judgment of the Court,
- to order the respondents jointly and severally to pay to the sum of €5,000 in application of Article 700 of the law relating to civil procedure as well as all costs of the appeal.

Under the terms of their final conclusions submitted on 22 August 2011 **the respondents** ask the Court:

- to quash the judgment pronounced inasmuch as it settled the provisional penalties and fixed a new daily penalty

and in a new ruling,

- to order Monsieur and Madame WATSON-SMITH jointly and severally to pay them the sum of €282,200 in respect of the daily penalties fixed in summary proceedings
- to fix the amount of the definitive daily penalties in accordance with the provisional penalties established by the ruling in summary proceedings on 24 February 2010,
- to order Monsieur and Madame WATSON-SMITH jointly and severally to pay them the sum of €5,000 in application of Article 700 of the law relating to civil procedure and to pay the costs.

## **GROUND FOR THE DECISION**

Whereas in the first place it is noted that the provisions of the summary judgment relative to the cancellation of the order to pay in respect of the seizure and sale dated 03 June 2010 are not in question;

Consequently that the judgment can only be confirmed on this count;

Whereas Monsieur and Madame WATSON-SMITH claim the sentences pronounced against them by the summary judgment of 24 February 2010 to be unfounded;

Whereas in application of Article 8 of the decree of 31 July 1992, the Judge for Enforcement cannot modify the provisions of the decision in justice providing the substance for the proceedings;

Consequently that the criticisms leveled by the appellants against the summary judgment of

24 February 2010 are inapplicable;

Whereas, concerning settlement of the penalties pronounced by the above-mentioned summary judgment, notified on 11 March 2010, it is relevant to recall the dispositions of Article 36 of the law dated 09 July 1991 according to which the amount of the provisional penalty is settled taking account of the behavior of the person to whom the injunction was addressed and the difficulties that person faced in obeying it;

#### Concerning the suppression of the contentious comments

Whereas the appellants claim to have withdrawn the comments posted by “Franklin” on 25/11/2008 but have not provided any proof of such withdrawal;

Whereas the respondents demonstrate on the other hand the non-execution of the obligations concerning the suppression of the postings certified on several occasions by the huissier designated by order of the court;

Consequently that, in fact, the reports of 2 June 2010 and 24 March 2011 establish that the posting “Franklin” had not been withdrawn at those dates;

Whereas the appellants do not invoke any difficulty or circumstance that could have prevented execution of the judge’s injunction;

Whereas the daily penalty, in conformity with the order of 24 February 2010 notified on 11 March 2010 applied from 11 April 2010 through to 11 June 2010;

Consequently that the penalty will be fixed in the sum of  $500 \times 60 = \text{€}30.000$  and must be paid by Monsieur and Madame WATSON-SMITH;

#### Concerning the use of “Cannes Accomodation”

Whereas the arguments of Monsieur and Madame WATSON-SMTTH concerning absence of responsibility in the use of the terms “Cannes Accomodation” in violation of the summary judgment are inadmissible for the reasons exposed above, relative to Article 8 of the decree of 1992;

Whereas the huissier’s records dated 15 April, 19 April, 23 April, 31 May 2010 and 11 January, 25 January, 04 March, 07 March 2011 highlighted 37 breaches, the other alleged breaches being insufficiently demonstrated;

Whereas Monsieur and Madame WATSON-SMITH have not demonstrated difficulties that would have legitimately prevented them from conforming to the judge’s injunction, the daily penalties will be due in this respect for the sum of  $\text{€}1000 \times 37 = \text{€}37.000$ ;

#### Concerning the publication of the provisions of the ruling on the Home page of the sites de Monsieur WATSON-SMITH “everything-cannes.com” and “azur.online.com”

Whereas the appellants do not demonstrate, by the documents they have produced, that they have, as ordered by the summary judgment dated 24 February 2010, published the provisions of this decision on the Home pages of the sites “everything-cannes.com” et “azur-online.com”;

Consequently that Monsieur WATSON-SMITH cannot validly claim, in justification of his

failure, that he has no link with the site “everything-cannes.com” whereas he is majority associate and *de facto* associate of the company EverythingCannes, to whom the site “everything-cannes.com” belongs;

Whereas the penalty in this respect must therefore be upheld, in accordance with the order of 24 February 2010, for the period from 21 March 2010 (10 days after the notification of the order) and for the two months up to 21 May 2010, representing a total amount of 100 x 60 = €6,000;

#### Concerning the setting of new penalties

Whereas there is no case for the establishment of a new penalty concerning the obligation to ensure the cessation of any use of the commercial name “Cannes Accomodation” since application of the penalty pronounced in this respect by the summary judgment dated 24 February 2010 is not limited in time;

Whereas, on the contrary, concerning the suppression of the contentious comments and the publication of the provisions of the order on the Home pages of the sites of Monsieur WATSON-SMITH, it would seem pertinent, in order to ensure the execution of the judge’s injunctions, to accompany them by a new provisional penalty under the precise conditions of the provisions of the present decision;

Whereas, finally, the judgment subject to question will be confirmed except insofar as the amounts due in respect of the penalties and the fixing of new penalties are concerned;

Whereas a fair decision requires application of Article 700 of the law relating to civil procedure in favor of the Respondents;

Whereas the appellants will pay the costs of the appeal and as a result their demands in respect of lawyers’ fees will be dismissed.

ON THESE GROUNDS

**The Court, ruling in public audience, in the presence of the parties,**

**Confirms the judgment in first instance except in respect of the amount of payment of the penalty and the fixing of new penalties,**

**Reversing the judgment in respect of these counts and ruling anew,**

**Fixes the payment due in respect of the penalties at the total amount of €73,000,**

**Orders the couple Monsieur and Madame WATSON-SMITH to pay this sum to Monsieur DRAILLARD and to the companies CANNES ACCOMODATION and CANNES ACCOMODATION REAL ESTATE;**

**States that the obligation on Monsieur and Madame WATSON-SMITH to suppress the contentious opinions “Ringo the Ringo 24/11/2008”, “Wayne 24/11/2008”, “Franklin 25/11/2008” and “Ringo the Gringo 26/11/2008” is accompanied by a new provisional penalty of €500 per day of delay which will start eight days after the notification of the present judgment and continue for two months, beyond which period it can be the subject of a new ruling,**

**States that the obligation to publish the provisions of the summary judgment of 24 February 2010 on the Home pages of the sites “everything-cannes.com” and “azur-online.com” is accompanied by a new provisional penalty of 100 €by day of delay for a period beginning eight days after the notification of the present judgment and continuing for two months, after which period there can be a new ruling,**

**Orders Monsieur et Madame WATSON-SMITH to pay to Monsieur DRAILLARD and to the companies CANNES ACCOMODATION and CANNES ACCOMODATION REAL ESTATE a sum of €2,000 in application of Article 700 of the law relating to civil procedure,**

**Rejects all other demands**

**Orders Monsieur et Madame WATSON-SMITH to pay all costs of the appeal which will be recovered in conformity with the provisions of Article 699 of the law relating to civil procedure.**

**CLERK TO THE COURT,**

**THE PRESIDENT,**