

TRIBUNAL DE GRANDE INSTANCE DE NANTERRE

**Ordinance issued in emergency procedure
On December 16, 2004**

PLAINTIFF

SOCIÉTÉ DES HOTELS MERIDIEN
10, Vercingétorix St., 75014, Paris

represented by Cyril Fabre,
Attorney at law at Paris Bar, K 37

V.

DEFENDANT

S.A.R.L. GOOLE FRANCE
54-56, Avenue Hoche, 75008, Paris

represented by Alexandra Neri (Herbert Smith

Law Office)

Attorney at law at Paris Bar, J 025

COMPOSITION OF THE COURT

President: Hélène Jourdièr, Vice-President, by delegation of the President of the Court
Greffier: Arnaud Boulard

Deciding in public session, by ordinance, in first instance:

In audience of November 15, 2004, the Court, after having listen the parties or their counsels, has decided to deliberate on December 13th, 2004 and then deferred the deliberation for today:

Taking into consideration the writ of summons, in emergency procedure, notified on October 25th, 2004 to S.A.R.L. GOOGLE FRANCE, by which the stock company SOCIETE DES HOTELS MERIDIEN requests to the Court, on the grounds of the Articles L. 716-6, L. 713-2 and L. 713-3 of the Intellectual Property Code, to:

- order GOOGLE FRANCE company to remove from its keywords generator accessible on its website www.google.fr any word or phrase imitating or reproducing in a slavish or quasi-slavish manner the trademarks MERIDIEN n° 1.613.199 and LeMERIDIEN n° 00/3.006.394 belonging to SOCIETE DES HOTELS MERIDIEN, and this under a penalty of 5,000 € per violation ascertained starting with the day of the ordinance to be issued;
- preclude GOOGLE FRANCE company from posting, at the moment of query input on the searching engine www.google.fr, advertising announcements in the benefit of companies offering products or services of class 42, protected [sic!] by the trademarks MERIDIEN n° 1.613.199 and Le MERIDIEN n° 00/3.006.394 belonging to SOCIETE DES HOTELS MERIDIEN, which [announcements] reproduce the above-mentioned trademarks, and this under a fine of 5,000 € for each violation established starting with the day of the ordinance to be issued;
- condemn the GOOGLE FRANCE company to all judicial costs;
- order GOOGLE FRANCE company to pay to SOCIETE DES HOTELS MERIDIEN the amount of 3,000 € on the grounds of the article 700 of the New Code of Civil Procedure;

Taking into consideration the conclusions filed in audience by GOOGLE FRANCE company, requesting firstly to establish that the action has no object and, secondary, to decide that the conditions provided the article L. 716-6 of the Intellectual Property Code concerning the application of interdiction measures are not met, and in any case requesting to the Court to:

- say and decide that any measure of general interdiction shall not apply to the commercial links which are not precisely identified as clearly counterfeiting, function of the terms which generate them and the concerned products and services;
- say and decide that the litigious sites identified after October 1st, 2004, the date of the summon, shall not be punishable under the article L. 716-6 of the Intellectual Property Code since the Court was not previously summoned by any claim concerning them;
- say and decide that no measure imposing GOOGLE to block the commercial links replying with terms belonging to the public domain following queries combining the terms “meridien” and “le meridien” shall be ordered;
- say and decide that no measure imposing GOOGLE to block the commercial links replying to queries concerning terms or distinct expressions such as: *le meridien, le meriden, le meridan, lemeridien, lemeridian, lemeriden, lemeridan, meridiana, meiridan, merdan, meridin, meridienne, méridienne, meridianne, meridiane, meridiano, meridiani, meiridn, le meridiano, le meridiani, lemeiridn, lemeridiana, lemeiridan, lemeridan, lemeridin, lemeridienne, lemeridienne, lemeridienne, le merdiana, le meiridan, le meridan, le meridin, le meridienne, le meridienne, le meridianne, le meridian, meridiens, hotelmeridien*, shall be ordered;
- reject all claims of SOCIETE DES HOTELS MERIDIEN;

- order SOCIETE DES HOTELS MERIDIEN to cover the judicial costs and to pay to GOOGLE France the amount of 10,000 € on the grounds of the article 700 of the New Code of Civil Procedure;

Taking into consideration the memos given to the Court after hearing which the parties were authorized to present in court for discussing the exhibits notified before the audience;

Whereas it is not contested that SOCIETE DES HOTELS MERIDIEN is the right holder of the trademarks MERIDIEN N° 1.613.199 et LE MERIDIEN N° 00/3.006.394, duly registered with the National Institute of Industrial Property for an amount of products and services, particularly for hotel services, activity for which [SOCIETE DES HOTELS MERIDIEN] is worldwide known;

That these trademarks are incontestably well-known as meant in the article L. 715-3 of the National Institute of Industrial Property;

That accusing GOOGLE FRANCE company of the violation of its trademarks in the context of the commercial links posted following the use of the web searching engine named “Google”, the SOCIETE DES HOTELS MERIDIEN instituted proceedings before the Tribunal de Grande Instance of Nanterre against it by act of October 1st, 2004, in order to obtain a decision holding [GOOGLE] liable of counterfeiting and ordering interdiction measures and remedies;

Whereas, according to the article L. 716-6 of the Intellectual Property Code *“the Court before which a counterfeiting action has been instituted may, deciding in a emergency procedure, provisionally interdict, subject to a periodical fine, the continuation of the allegedly counterfeiting activities [...] The action for interdiction [...] shall be admissible only if the action on merit is well-founded and engaged within a short term after the day when the trademark holder [...] took knowledge of the facts on which the action is based. The judge may submit the interdiction to the constitution of securities destined to assure the eventual reparation of the prejudice suffered by the defendant if the action of counterfeiting is subsequently held to be unfounded.”*

Whereas GOOGLE FRANCE company alleges that the action of the SOCIETE DES HOTELS MERIDIEN based on this law provision does no longer have any object since [GOOGLE FRANCE] has taken the necessary measures to remove the litigious commercial links;

That the defendant submitted as evidence the bailiff’s reports showing that, at the date of their issuance (October 14, November 12 and November 29 2004), some of the litigious links no longer appeared;

that, nevertheless, nothing proves that problems are completely and definitively solved; that the tests made by the bailiff on November 15 and December 1st, 2004 at the initiative of the plaintiff give the impression of the contrary;

that, indeed, as long as GOOGLE company does not ban the litigious term definitively, it is susceptible to be at the origin of new commercial links, taking into consideration the automatic part [of the system] and the role of the auction in the system imagined by GOOGLE for the creation and the display of advertising announcements;

that, in this way, the present action continues to present an interest for the plaintiff;

Whereas that the first of the conditions required by the article L. 716-6 of the Intellectual Property Code for the claim of temporary interdiction is incontestably accomplished since SOCIETE DES HOTELS MERIDIEN took knowledge of the litigious activity of GOOGLE FRANCE in April 2004, and it initiated proceedings within the six months, discussing in the same time with GOOGLE FRANCE in order to amicably obtain satisfaction;

Whereas GOOGLE FRANCE, for defending itself against the claimed measures, denies in a second time the serious character of the action in counterfeiting;

That, however, the application of the article L. 716-6 of the Code of Intellectual Property does not require to incontestably state the counterfeiting, but only to bring elements allowing to presume the action on merit as admissible;

Whereas in this case SOCIETE DES HOTELS MERIDIEN brought as exhibits two bailiffs reports issued on Mai 27, June 10 and July 1st, 2004, showing notably that, following a query combining the terms “meridien” and “lemeridien”, the site www.google.fr posted, in the same time with the research results, advertising links for hotel services competing SOCIETE DES HOTELS MERIDIEN; that is also stated that, within the list of the keywords suggested by the “Adwords” system to the advertising candidates, the terms “meridien” and “lemeridien” can be founded, for instance when the announce refers to hotel activity.

(...) Whereas the paying referencing system called “Adwords”, offered by GOOGLE FRANCE company, is based on a close correlation between [on one hand] the keywords chosen by an advertiser for causing the publication of its announcement and [on the other hand] the request of the user of the searching engine; that therefore, since a commercial link appears, this implies that the advertiser chose as keyword at least one of the words constituting the query;

That, even if it defends itself in this respect, GOOGLE FRANCE obviously has an active role in the choices made by the advertiser; that, for example, in the chapter “suggestion tools” of its program of creation of an “Adwords” commercial link, it suggests to add additional keywords in order to *“facilitate the improvement of the announcement pertinence”*;

That in this way it proposes a list of “specific keywords”, encouraging, in the following terms, the client to choose them:

“In order to increase your clickthrough rate, think about replacing the generic keywords with more precise keywords, which seem pertinent to you, as [they are] presented hereinafter”

That, in the same time, the proposed list is presented in the “advanced function” as follows : *“Your ads may afterwards be automatically publicized for these additional requests”*;

That the limitation of liability clause reminding to the advertiser that is liable of the selected keywords is not sufficient to discharge GOOGLE FRANCE company of its liability toward third parties;

Whereas the user of the searching engine who, by formulating a query using the trademarks “méri dien” or “le méridien”, search the services covered by such trademarks and find a commercial link to another offer concerning identical services or similar services, risks to consider [them as having] the same origin;

Whereas, consequently, the use by GOOGLE FRANCE company of a third party’s trademark, through the request of the user, for making the advertising of a product aimed by this trademark, is likely to fall under the interdictions provided by the articles L. 713-2 and L. 713-3 of the Intellectual Property Code;

That the serious character of the action on the merit brought by SOCIETE DES HOTELS MERIDIEN is therefore undeniable;

That, consequently, it is well founded to seek injunctive relief on the grounds of the Article L. 716-6 of the Intellectual Property Code and to request provisory measures destined to prevent violation of its rights;

Whereas GOOGLE FRANCE company has done valuable efforts to satisfy the requests of SOCIETE DES HOTELS MERIDIEN; that nevertheless there are still problems and serious

doubts on the stability of the measures taken for the respect of protected trademarks; that it is consequently suitable to partially admit, in expectation of the decision on the merit of the case, the claimed measures, within the conditions set forth in the judgment;

That the dismissed party must cover the expenses under the article 696 of the New Code of Civil Procedure; that, in addition, it shall be unfair to leave the other court-related expenses entirely at plaintiff's charge;

Whereas there is urgency in making the alleged counterfeiting acts cease and, consequently, it is appropriate to declare this decision as provisionally executable;

ON THESE GROUNDS

Rendering its decision, in emergency procedure, and in first instance, the Court:

- Say that the conditions of application of the provisions of the article L. 716-6 of the Intellectual Property Code are met;
- Consequently, and on temporary terms:

1° Order GOOGLE FRANCE company to remove from its keyword list proposed by the service of advertising announcements called "Adwords", accessible on Internet, the following words or phrases:

- **meridien**, in the singular or in the plural, with or without accent
- **le meridien**, joined or separated, in the singular or in the plural, with or without accent
- the same, combined with **hotel** or **ressort**, in the singular or in the plural, with or without accent

and this under penalty of 150 € per day of delay following the 8th day from the official notification of the present ordinance,

2° Interdict GOOGLE FRANCE company to post, in reply to queries of the searching engine users concerning the following terms:

- **meridien** in the singular or in the plural, with or without accent
- **le meridien**, joined or separated, in the singular or in the plural, with or without accent
- the same, combined with **hotel** or **ressort**, in the singular or in the plural, with or without accent

commercial links concerning products and services covered by the trademarks MERIDIEN N° 1.613.199 and LeMERIDIEN N° 00/3.006.394 belonging to SOCIETE DES HOTELS MERIDIEN,

and order GOOGLE FRANCE company to deactivate, within 72 hours from the request it is addressed, such a commercial link, under penalty of 150 € per day of delay;

- Decides that the Court reserves the authority to liquidate the above penalties;
- Orders the provisory satisfaction of order;
- Condemns GOOGLE FRANCE company to pay to SOCIETE DES HOTELS MERIDIEN the amount of 2,000 € on the grounds of article 700 of the New Code of Civil Procedure;
- Condemns GOOGLE FRANCE company to judicial costs.

Done at Nanterre on December 16, 2004.

The Clerk,

Arnaud Boulard

The President of the Court,

Hélène Jourdier