The 'Cultur'elle' restaurant review case

High Court of Bordeaux (30 June 2014)

In a case in which the owners of a restaurant initiated a summary procedure after their business was the subject of a negative blog review, the court's decision to require the blogger to remove the review's title may indicate an evolution of judicial reasoning.

The summary judgment given by the High Court of Bordeaux on 30 June 2014 surprised many. The facts are quite common: a blogger posted an article on her blog 'Cultur'elle' recalling her bad experience at a restaurant called Il Giardino. The article bore the title: 'The place to avoid in Cap Ferret: Il Giardino.' Unhappy about the impact of this article, which appeared among the top results in a Google search, on the reputation of the restaurant, the owners of the restaurant initiated a summary procedure.

Case law in France has reached two kinds of outcomes with regard to matters of denigration in blogs. The main issue is the distinction between Article 1382 of the French Civil Code, which is a general article on fault-based liability, and the Freedom of the Press Act of 29 July 1881 (the '1881 Act'). The 1881 Act only applies when the denigration targets an identifiable natural or legal person, while Article 1382 applies when the denigration concerns products or services, 'as long as they don't harm a natural or legal person's honor or consideration.'[1] However, the exact criteria with which to choose between the two regimes is unsettled. The Cour de Cassation has tended to restrict the situations in which Article 1382 applies, as the criticism will often be linked to a person[2]. However, a decision of the Second Civil Chamber of the Cour de Cassation[3] seemed to indicate that in situations where there is both a denigration of products or services and of a legal person, the former prevails, and therefore Article 1382 shall apply.

First, it should be highlighted that the decision was issued in a B2C case. As such, the decision may be seen as rather severe as far as a consumer is concerned: €1,500 for damages along with an obligation to remove the words 'a place to avoid' from both the blog and Google's results, subject to a daily penalty of €50 for non-compliance. The blogger was also under an obligation to undertake the necessary formalities to ensure the article is not published on the internet. In the Web 2.0 era where all users tend to share their own opinion via social platforms, such a decision is astonishing.

In this case, the judge's reasoning is quite unusual. According to the judge, the title of the article clearly recommends avoiding the restaurant and, *de facto*, is highly visible not only on the blog itself, but on Google, appearing in fourth position in the results. In this context, the title is deemed to represent an obvious denigration aimed at making potential customers avoid the restaurant, which could heavily impact the restaurant's image and reputation. Therefore, according to the decision, the title constitutes a 'manifestly unlawful disturbance' that needs to be stopped, that is to say one of the situations in which a summary judgment allows the implementation of emergency measures. The blogger was thus required to change the title of the article and remove the litigious title from references on Google.

This reasoning is unusual for several reasons. We are under the impression that it distinguishes the title from the body of the article. Secondly, the body of the article almost only refers to the products and services, while the title clearly refers to the restaurant, i.e. the legal person. In this context, if the judge had to choose two different regimes, a coherent solution would have been to apply the 1881 Act to the title and Article 1382 of the French Civil Code to the body of the article. In this case, the judge applies Article 1382 to the title.

Moreover, the chosen regime seems to contradict the classical outcomes reached by case law: indeed, the decision specifically says that the title 'strongly impacts the restaurant's image and reputation,' which appears to be a situation that falls under the application of the 1881 Act. More specifically, the judge's wish to apply a different regime to the title and remove the title from the scope of legal protection for freedom of the press by refusing to apply the 1881 Act, may show an evolution in judicial reasoning. Such a decision raises the questions about the role of blog titles, mostly because of the link with search engines: as it appears in the judgment, the reference on Google plays a key role. One wonders if this decision indicates that, since titles play such an important role, they should no longer benefit from the legal protection for freedom of the press and the 1881 Act.

One must bear in mind that such a decision remains a summary judgment, and takes place in a very specific context. The innovative aspect of this decision should be tempered: the judgment of the High Court of Bordeaux doesn't have the authority of *res judicata*, as indicated by Article 488 of the French Civil Procedure Code.

Lastly this procedure ended up being quite a trap for the owners of the restaurant: they got some compensation for the damage, but the restaurant would have been subject to a vendetta from other bloggers. The best legal advice might have been to settle things with a goodwill gesture.

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1. Cour de Cassation First Civil Chamber, 20 September 2012.
2. Cour de Cassation First Civil Chamber, 6 October 2011.
3. Cour de Cassation Second Civil Chamber, 22 November 2012.