

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

THE DISTRICT COURT OF GRASSE
DEPARTMENT OF SUMMARY PROCEEDINGS
TEMPORARY INJUNCTION, 08 October 2008

**Bruno DRAILLARD, S.A.R.L. CANNES ACCOMMODATION, S.A.R.L.
CANNES ACCOMODATION REAL ESTATE versus Wxxxxxxx LEXXXX**

**DECISION N°: 2008/767
RG N° 08/00694**

At the public audience of summary proceedings held on 30 July 2008

We, Anne VELLA, Vice-President of the District Court of GRASSE, assisted by Christine SIGAUT, Clerk of the Court during the hearing and by Corine VICTORIA, Clerk of the Court at the announcement of the decision, have pronounced the decision the terms of which are as follows:

BETWEEN:

Monsieur Bruno DRAILLARD
2 rue Lafayette
06400 CANNES

S.A.R.L. CANNES ACCOMMODATION acting through its legal representative in office,
2 rue Lafayette
06400 CANNES

S.A.R.L. CANNES ACCOMODATION REAL ESTATE acting through its legal representative in office,
2 rue Lafayette
06400 CANNES

All three represented by Maître MANIN, of the SELARL SOPHIA LEGAL SOCIETE D'AVOCATS, barristers at the bar of GRASSE

AND:

Monsieur Wxxxxxxx LEXXXX
28 avenue XXXXXXXXXXXX
06400 CANNES

represented by Maître REYNEL, barrister at the bar of NICE replaced by Maître OLLIVIER, barrister at the bar of NICE.

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Here a number of paragraphs of the Temporary Injunction, which are not of general interest, have been omitted in this English version, so as to provide the reader with only those parts of the judgement likely to be of interest to him. These paragraphs can be consulted in their entirety on the French version posted on the Internet site www.cannes-accommodation.com.

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Concerning the existence of a disturbance which is manifestly unlawful

Monsieur Bruno DRAILLARD, S.A.R.L. CANNES ACCOMMODATION and S.A.R.L. CANNES ACCOMODATION REAL ESTATE base their demand on the existence of an activity of unfair competition, as defined by the provisions of Article 1383 of the Civil Code and on the existence of a manifestly unlawful disturbance.

Article 873 of the Code of Civil Procedure provides that the President can, within the limits and even in presence of a serious objection, make a temporary injunction concerning protective or restoration measures that are essential either to prevent imminent damage or to put an end to the manifestly unlawful disturbance.

In the present instance Monsieur Bruno DRAILLARD obtained the domain name “cannes-accommodation.com” on 17 July 2001. The same day in the Commercial Register for CANNES he was registered in his own right as renter out of furnished accommodation, under the commercial name ‘CANNES ACCOMMODATION’. On 28 August 2004, he created the companies CANNES ACCOMMODATION and CANNES ACCOMODATION REAL ESTATE, integrating his commercial name into the denomination of the two companies. Since the month of September 2006, Monsieur Wxxxxxx LEXXXX has exercised the same activity under the name CANNES HOUSE RENTALS.

The reading of an affidavit by a *huissier de justice*¹ drawn up on 14 April 2008, by Maître Richard KISS, reveals that, when the words “CANNES ACCOMMODATION” are typed into the GOOGLE search engine, a list of e-mail addresses appears, at the head of which is: “CANNES ACCOMMODATION” and the name of the site www.cannes.house.rentals.com created by Monsieur Wxxxxxx LEXXXX.

Without it being necessary to rule on the distinctive character of the terms “CANNES ACCOMMODATION”, the examination of which comes under the competence of the judge of substance, it is both clear from the elements brought out during the proceedings and obvious that the use of the terms “CANNES ACCOMMODATION” as search words results in priority access to the site operated by Monsieur Wxxxxxx LEXXXX. These terms are on the first page of his Internet site. They figure as headings on all the advertisements.

This represents a use of identical terms, for the operation of an identical commercial activity, consisting of the renting out of furnished accommodation, in the same city of Cannes. This situation obviously sows seeds of confusion in the minds of the public who may believe they are in contact with clients of the companies “SARL CANNES ACCOMMODATION” and

“CANNES ACCOMODATION REAL ESTATE” created by Monsieur Bruno DRAILLARD and not with the clients of a competing company, in this instance operated by Monsieur Wxxxxxx LEXXXX in his quality as joint manager.

It is therefore agreed that this manifestly unlawful disturbance be stopped and that Monsieur Wxxxxxx LEXXXX and the company CF INVEST be ordered to cease immediately all use of the commercial name and denomination “CANNES ACCOMODATION” or “CANNES ACCOMODATIONS” and of any similar terms whatsoever, by any procedure whatsoever and in particular on their Internet site, in their advertising or as keywords for publicity or for referencing, on pain of the application of a penalty of €1 500 for each breach committed.

The terms of the present ruling will be published:

- in two newspapers selected by Monsieur Bruno DRAILLARD and the companies CANNES ACCOMODATION and CANNES ACCOMODATION REAL ESTATE at the expense of Monsieur Wxxxxxx LEXXXX and the company CF INVEST provided that the cost of each insertion does not exceed the sum of €2 500.

-on the Home Page of the site “cannes-house-rentals.com” for a period of ten days, on pain of a penalty of €1 000 for each breach committed.

It is formally acknowledged and recorded that Monsieur Wxxxxxx LEXXXX and the company CF INVEST confirm that they will longer use the terms “CANNES ACCOMODATION” as a keyword on the search engine “google.fr” and that they will remove the mention “CANNES ACCOMMODATION” from the Internet site www.cannes-house-rentals.com.

Monsieur Wxxxxxx LEXXXX and the company CF INVEST against whom this judgement is made will pay the expenses of the summary proceedings as well as the sum of €1 500 in application of Article 700 of the Code of Civil Procedures:

ON THESE GROUNDS, JUDGEMENT IS MADE BY ISSUE OF AN ORDER AVAILABLE AT THE OFFICE OF THE CLERK OF THE COURT, MADE IN THE PRESENCE OF THE PARTIES INVOLVED AND IN THE FIRST INSTANCE,

In view of Articles 808 and 873 of the Code of Civil Procedure;

In view of the documents and evidence placed before the court during the hearing;

Acknowledging the voluntary involvement in the hearing of the company CF INVEST in its quality as operator of the Internet site created by Monsieur Wxxxxxx LEXXXX;

Confirming the existence of a manifestly unlawful disturbance;

It is ordered that Monsieur Wxxxxxx LEXXXX and the company CF INVEST stop immediately all use of the commercial name and denomination “CANNES ACCOMODATION” or “CANNES ACCOMODATIONS” and of any similar terms whatsoever, by any procedure whatsoever and in particular on their Internet site, in their advertising or as keywords for publicity or for referencing, subject to the application of a penalty of €1 500 for each breach committed.

It is ordered that the terms of the present order be published:

- in two newspapers selected by Monsieur Bruno DRAILLARD and the companies CANNES ACCOMMODATION and CANNES ACCOMODATION REAL ESTATE at the expense of Monsieur Wxxxxxx LEXXXX and the company CF INVEST provided that the cost of each insertion does not exceed the sum of €2 500.

-on the Home Page of the site “cannes-house-rentals.com” for a period of ten days, with a penalty of €1 000 for each breach committed.

It is formally acknowledged and recorded that Monsieur Wxxxxxx LEXXXX and the company CF INVEST confirm that they will longer use the terms “CANNES ACCOMODATION” as a keyword on the search engine “google.fr” and that they will remove the mention “CANNES ACCOMODATION” from the Internet site www.cannes-house-rentals.com.

The Court condemns Monsieur Wxxxxxx LEXXXX and the company CF INVEST against whom this judgement is made to pay the expenses of the summary proceedings as well as the sum of €1 500 in application of Article 700 of the Code of Civil Procedures;

And We have signed hereunder with the Clerk of the Court,

The Clerk of the Court

The President

The judgement is given under the seal of The French Republic hereafter affixed and countersigned by the Senior Clerk to the Court.

¹ a member of the legal profession whose responsibility includes formally bearing witness to events or situations (*constat d'huissier*); *signification*, a form of [service of process](#); making the decisions of the [courts](#) available to the public; and execution of the courts' decisions, such as [seizures](#) and [evictions](#).