

IT.CAN NEWSLETTER/BULLETIN

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Les auteurs de la première partie du présent bulletin sont les professeurs [Teresa Scassa](#), [Chidi Oguamanam](#) et Stephen Coughlan de l'Institut de droit et de technologie de la [Faculté de droit de l'Université de Dalhousie](#). Les professeurs [Pierre Trudel](#) et [France Abran](#) de la Chaire en droit des technologies de l'information et du commerce électronique L.R. Wilson de la Faculté de droit de l'Université de Montréal ont rédigé la seconde partie du présent bulletin.

Part 1

Criminal Law – FLIR as Basis for Reasonable Grounds for Search Warrant

Sixteen months ago in *R. v. Tessling* the Supreme Court of Canada ruled that police can use a Forward Looking Infra-Red Scanner (FLIR), which reads the heat profile of buildings or other objects, on the residence of a suspect without a warrant, since use of a FLIR does not invade a reasonable expectation of privacy. Crucial to the Court's reasoning was that the information provided by a FLIR is in itself meaningless. Two trial level decisions, both coincidentally from Nova Scotia, have recently considered the issue of the extent to which a FLIR reading can contribute to the existence of reasonable and probable grounds justifying the issuance of a search warrant.

In *R. v. Durling*, (N.S.P.C.) the police received an anonymous "Crimestoppers" tip that Jennifer Durling was conducting a marijuana grow op at a particular address, which was said to be where she lived. Various other information was provided, including her telephone number and place of employment. Police observed Jennifer Durling's car at the residence and at her reported place of employment. Subsequently the police performed a FLIR test at the address which had been given in the anonymous

tip. This FLIR test showed a bright white area, which indicated heat coming from the basement of the building. In addition, the police noted that the windows in this area were covered by an opaque material which prevented light from escaping the building. The FLIR operator was of the view that this evidence was consistent with the heat generated by high intensity lights used in a marijuana grow operation.

Following its execution, the accused challenged the validity of the warrant, arguing that it ought not to have been issued. The test on review was not whether the reviewing judge would have issued the warrant, but whether there was sufficient evidence before the issuing justice for him or her to properly conclude that the warrant should issue. In *Durling*, the appeal judge held that this was not the case.

The evidence upon which the warrant could be issued consisted of the details of the tip and the FLIR reading. The reliability of the tip, and whether it could be relied on to establish reasonable and probable grounds, depended on the totality of the circumstances. Here, relevant factors included that the tipster was unknown to the police, the tip was not terribly detailed, and the tipster's source of knowledge was not revealed. In this case, the tipster had no proven "track record" indicating that he or she could generally be relied upon. The corroborating detail provided by the tipster, such as the address and place of work of the accused, were publicly known pieces of information, and so did little or nothing to corroborate the tipster's story. Further, those details did not relate to the alleged offence itself, and so were of limited corroborative effect.

To the extent that there was any corroborative evidence, then, the reviewing judge held, that evidence had to come from the FLIR and the blocked off window. That evidence, however, was not sufficiently strong to justify the warrant. The FLIR had "some probative value" (para 36) but was not sufficient to justify issuing the warrant. In particular the judge held that the FLIR results were

not equivalent to the electrical consumption records, available publicly, which had been relied in *R. v. Plant* as corroboration. Accordingly the search was warrantless and violated s. 8 of the *Charter*.

R. v. Woodworth, 2006 NSSC 22 (not yet available online) had extremely similar facts to *Durling*. The police received a tip from a confidential informant that the accused were conducting a marijuana grow-op in their basement. The informant had not been proven reliable, in the sense that information he had supplied in other cases had not yet led to any prosecutions, but some of that other information had been confirmed. After verifying that the residence in question was owned by the person the tipster had said owned it and observing the accused's vehicle there, the police used a FLIR on the house. The reading from the FLIR indicated that the surface temperature of the north-west corner of the basement was very high, indicating that heat was escaping from a specific part of the basement wall. The officer also scanned other houses in the area, which did not show the same pattern of heat loss.

As in *Durling*, much of the information provided by the tipster was publicly available. He had indicated, for example, that the house was heated by a wood stove, but this fact would have been obvious to anyone from the large pile of wood stacked outside the house. Most of the tipster's information was not compelling, but some pieces were less likely to be known publicly: that the wood stove was on the main floor, for example. The reviewing judge also considered the usefulness of the FLIR reading. On its own the FLIR could not distinguish between heat vented from a marijuana grow-op and heat produced by a dryer operated at a high heat. However, the judge held that the reading could constitute corroboration of the tip, especially when combined with the unlikelihood that a dryer would have been operating at high heat at 11:30 p.m..

Ultimately, the reviewing judge concluded, it could not be said that the warrant should not be issued. In particular, he held that the FLIR readings were a *better* corroborative source of the tip than were electrical consumption records in some previous precedents.

Domain Names

IN *THRIFTY, INC. v. SUPRIYO MALAKER* A THREE-PERSON panel considered a dispute over the domain names thrifty.ca and www.thrifty.ca. The complainant Thrifty owns registered Canadian trademarks for THRIFTY and THRIFTY RENT A CAR in relation to the leasing of vehicles and online vehicle leasing services. It also owns similar trademarks in other countries, and is the registrant of the domain name thrifty.com. The panel found that neither of the contested domain names were confusingly similar to the complainant's registered trademarks. The panel was influenced by the fact that "thrifty" "has a well-known and often-used descriptive and generic meaning: "economical", "careful with money and resources", "prudent", "frugal", "wisely economical", etc." (at para 4). They noted that the Registrant's site provided a directory of services fitting into six general categories, which included "travel". One of the five entries under "travel" was "car rental", but the panel noted that this made the link only one of about a total of forty links on the page. The panel stated: "It is readily apparent to the user viewing this page that it serves as a directory and referral service. No business names or trade marks appear on the page in connection with the listed services, and the only trade mark or business name on the page at all is "thrifty.ca" with a maple leaf logo overlaid on the concluding ".ca" at the top of the page." (at para 17) The panel characterized the site as being one aimed at thrifty consumers seeking good deals in a range of areas. The panel noted "It would be very clear to any user expecting to encounter Thrifty's business that the Registrant's site is not operated by Thrifty and is not part of a car rental business." (at para 18)


The panel went on to note that in their view the domain name was not registered in bad faith. They observed that the CDRP, as compared to the UDRP, took a much more restrictive approach to defining bad faith. In this case, the complainant introduced evidence that the registrant was a "serial cyber-squatter" (para 23). The evidence consisted of a list of other domain name registrations that were similar to well known trademarks. The registrant acknowledged that he collected domain names, but pointed out that he had never sold any of his domain names. He also argued that the domain names in his portfolio that were similar to well known trademarks made up less than 3% of his overall collection of domain names.

Comment on the issues raised in these cases
at the IT.Can blog.



The panel noted that in one other dispute under the CIRA policy, the same registrant had been found to violate the CDRP (*Priceline.com Inc v. Supriyo Malaker*). Nevertheless, they found that “the general pattern and overall business plan [of the Registrant] in no way can be said to constitute a simple “pattern of registering domain names in order to prevent persons. . . from registering.” (at para 27). The panel also declined to find that the primary purpose of the registration was to disrupt the business of the complainant: “The Registrant’s business plan, while it perhaps has some impact on the Complainant, is in its primary function independent of the Complainant.” (at para 30) The panel also found that the parties could not be described as “competitors”.

On the issue of the registrant’s legitimate interest in the domain name, the panel ruled: “the descriptive nature of the word ‘thrifty’ is sufficient to rebut this assertion of no legitimate interest at the outset.” (at para 35)

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IN *CANADIAN THERMOS PRODUCTS INC. v. MICHAEL Fagundes*, a three-person panel considered a dispute over the domain name thermos.ca. The complainant was the owner of the registered Canadian trademarks THERMOS and THERMOS & DESIGN. The panel noted that the appropriate test of confusingly similar under the CDRP was “a test of resemblance based on first impression and imperfect recollection, rather than a test of source confusion as applied in cases of trademark infringement under the Canadian *Trade-marks Act* or passing off at Canadian common law.” (at para 26) It is interesting to note that in the *Tbrifty* case discussed above, the panel seems to apply a different test, looking behind the mark to the actual services offered on the web site. In *Canadian Thermos Products*, the panel is critical of taking such an approach, noting that: “A comparison of domain names and trademarks without considering marketplace criteria is consistent with the way in which domain names are used on the Internet. Internet users often use domain names without knowing the nature and content of the website to which the domain name resolves and other marketplace criteria that are important considerations in a conventional trademark confusion case.” (at para 26) Using the test articulated, Bradley

J. Freedman, writing for the panel, found that the domain name thermos.ca was identical to the complainant’s registered trademark THERMOS and confusingly similar to the THERMOS & DESIGN mark.

In considering whether the domain name was “confusingly similar” to the registered marks, the panel also dismissed an argument that the complainant’s marks were not distinctive. Freedman noted that distinctiveness was not an appropriate consideration at the “confusingly similar” stage, although it may have some relevance in considering whether the registrant had a legitimate interest in the domain name, or whether it was registered in bad faith.

On the issue of bad faith, the complainant made allegations under all three of the headings in the CDRP. The complainant first alleged that the registrant had registered the domain name “primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant or to a competitor of the Complainant for valuable consideration...” (at para 38). The complainant’s allegations under this heading were based on an offer by the registrant to sell the domain name for an allegedly “exorbitant” amount that was made during without prejudice settlement discussions relating to a lawsuit in the Federal Court. The registrant objected to the admission of details of these discussions. The panel agreed that such evidence was not admissible in the circumstances, but confined the effect of their decision to the case before them, noting that “evidence of without prejudice offers to sell a domain name for a profit might be admissible in proceedings under the Policy.” (at para 40). In any event, the panel was not prepared to accept that, even if the evidence were admissible, it necessarily established bad faith. They noted that the registrant had used the domain name in conjunction with his business for over two years before the complainant’s lawyers first contact him, that the offer to sell was not made until after settlement discussions in relation to the Federal Court lawsuit were commenced, and the panel had no information regarding the actual amount of the offer.

Although the complainant alleged that the registrant had registered the domain name so as to prevent the complainant from registering its marks, contrary to

para. 3.7(b) of the CDRP, the panel noted that para 3.7(b) also required a complainant to establish that this was part of a pattern of similar conduct. In this case, the complainant had not provided any evidence to establish this point. Finally, the complainant alleged that the domain name was registered “primarily for the purpose of disrupting the business of the Complainant” contrary to para. 3.7(c). This paragraph also requires that the complainant establish that the registrant is a competitor. In this case, the complainant argued that its potential customers would be misled into thinking that the registrant’s website was that of the complainant. Freedman noted that the complainant’s marks were very well known in Canada, which should have alerted the registrant to the fact that there might be some objection to their registration, and some confusion that might flow from the registration. Nevertheless, the panel found that the circumstances supported a finding of good faith. In particular, they noted that the registrant’s nickname was “Thermo”, and his business name, Thermo’s Design Group, was often abbreviated to Thermo’s. At the time the domain name was registered, thermo.com and thermo.ca were not available. Further, the registrant used the domain name in conjunction with his business for over two years before first being contacted by lawyers for the complainant. There was no use of the domain name to reference the complainant, or its products or services, and there was no evidence of any desire on the part of the registrant to disrupt the complainant’s business.

Para. 3.7(c) also requires a finding that the registrant is a competitor of the complainant. Freedman noted that there were differing views in the case law on how broadly ‘competitor’ should be defined. Those differing views were reflected also among the different panel members in this case. These ranged from a broad interpretation of competitor to include “competition for the attention of Internet users” (at para 50), to a competitor being one who “must be gaining an economic or other benefit from the traffic the registrant is drawing away from the complainant” (at para 51), to the narrowest view that ‘competitor’ refers to “direct or indirect economic competition in which the registrant provides or promotes wares or services that are at least imperfect substitutes for the complainant’s wares or services” (at para 52). In spite of the disagreement, the panel members were

in agreement that the complainant failed to establish bad faith registration under para 3.7(c). The panel did not consider the issue of the registrant’s legitimate interest in the name, as it had found there was no bad faith.

In this case, the registrant also alleged that the complainant had brought its complaint in bad faith, contrary to para. 4.6 of the CDRP. Under para. 4.6, a registrant must prevail against the complaint, and must then establish that the complainant brought the complaint in order to “unfairly and without colour of right” obtain a transfer or cancellation of the domain name registration. The registrant alleged that the complainant’s actions had exhausted his financial resources. He also noted that the complainant had unilaterally discontinued the law suit in the Federal Court, and had tried to introduce into the CDRP proceeding evidence of the settlement discussions. The panel noted that the registrant’s arguments focused on the “unfairly” component of para 4.6, but did not address “without colour of right”. The panel defined this as meaning “an honest belief in a legal right or in a state of facts which, if it existed, would be a legal justification or excuse.” (para 59) The panel found that given the complainant’s trademarks, and previous broad interpretations of “bad faith” by other CDRP panels, that the registrant had not established that the complainant acted without colour of right.

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In *GENERAL MOTORS ACCEPTANCE CORP. v. BOB Woods*, a three person panel considered a dispute in relation to the domain name gmacmortgages.ca. The complainant, known as GMAC, has operated in Canada since 1919, and is the registered owner of the Canadian trade-marks GMAC, GMAC INSURANCE and GMAC INSURANCE & DESIGN. The GMAC trademark has been used in Canada in association with a wide range of financial services including mortgages. ‘GMAC’ is also used in a number of trade names of businesses associated with the complainant. The complainant also holds a number of domain name registrations including gmacmortgage.com, gmacresidentialfunding in both the .ca and .com domains, and gmacrealestate in the .ca and .com domains. The disputed domain name resolved to a site which advertised his services as a mortgage broker for a company called Assured Mortgages. This

company is a competitor of the complainant. When contacted by the lawyers for the complainant, the registrant's counsel explained that the registrant is the principal of a company which filed a business name registration to carry on business as "Georgetown, Milton, Acton Combined (GMAC) Mortgages", and that the domain name had been registered in relation to this business.

The panel found that the domain name was confusingly similar to the complainant's marks. They noted that the domain name contained all of the complainant's GMAC mark, and that the addition of "mortgages" and ".ca" did not prevent a finding of confusing similarity. In fact, they found that the addition of the word "mortgages" would contribute to a likelihood of confusion.

The complainant alleged that the registration was in bad faith as it was primarily for the purpose of disrupting the business of the complainant, who is a competitor of the registrant. The panel agreed. It found that both parties were competitors in the field of mortgage and insurance services. Further, it found that given the registrant's experience in the field, he should be aware that customers would be likely to be confused or misled.

The panel found that the registrant had no legitimate interest in the mark, noting that GMAC or gmacmortgages was not a trademark of the registrant. He worked for a company called Assured Mortgages, and his registration of the "Georgetown, Milton, Acton Combined" business name was "a thinly-veiled attempt to try to justify the use of the acronym GMAC" (at p. 8). The panel ordered the transfer of the domain name to the complainant.

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been approved, Aliant Telecom, Bell Canada, MTS Allstream and SaskTel will be required to transfer their VoIP 9-1-1 call routing customers to 0-ECRS.

Among the issues addressed were that 9-1-1 agencies would be required to disclose the 10-digit numbers that local exchange carriers used to route calls. It had been argued that there were concerns with releasing these numbers to unknown and unregulated third parties. The Commission noted, however, that previous rulings had required that anyone providing VoIP services in Canada would either be operating as a local exchange carrier or as a reseller, but in either case would not be an "unknown third party".

Telecommunications

The CRTC gave [final approval](#) to tariff notices and decisions it had rendered previous relating to 9-1-1 service through voice over Internet protocol (VoIP) providers. The Commission directed Aliant Telecom, Bell Canada, MTS Allstream and SaskTel to allow VoIP service providers access to zero-dialed emergency call routing service (0-ECRS) and to file tariff revisions accordingly. Once the tariff revisions have

2^{ème} partie

Baladeur numérique – Autorisation d'un recours collectif

La requérante demande à être autorisée à entreprendre un recours collectif contre Apple. S'appuyant sur la *Loi sur la protection du consommateur*, elle prétend que le fabricant Apple a fait de fausses représentations quant à la durée de vie de la pile de son baladeur numérique de marque iPod. Et elle invoque que ces fausses représentations sont un fait commun à tous les membres du groupe.

Le tribunal rejette la requête. La requérante ne rencontre pas toutes les conditions d'autorisation d'un recours collectif prévues à l'article 1003 C.p.c. D'abord, le tribunal n'est pas satisfait que les faits allégués dans la requête paraissent justifier, à première vue, une défectuosité de la pile de la part du fabricant. Il manque des éléments essentiels, soit la précision quant à la génération de baladeurs iPods dont il est question et la durée raisonnable estimée pour une telle pile rechargeable aux ions. De plus, la requérante ne peut représenter, de façon claire et certaine, le groupe de personnes ayant acheté un baladeur iPod de la même génération que le sien puisque la requête ne révèle pas cette information essentielle. On ne sait pas non plus si toutes les générations de iPods étaient munies du même guide d'instruction, plus particulièrement en ce qui concerne la promesse relative à la durée de vie de la pile rechargeable.

Lenzi c. Apple Canada inc., 2006 QCCS 453 (IJC), 1^{er} février 2006.

Fraude sur Internet

Deblois voulait acquérir des biens mis en vente sur Internet par deux vendeurs domiciliés en Europe. Il procède alors à deux transferts de fonds monétaires par l'intermédiaire de Western Union. Mais il n'a jamais reçu la marchandise qu'il a payée et a perdu contact avec les personnes concernées. Il réclame à Western Union le remboursement des sommes versées.

Le tribunal rejette l'action de Deblois contre Western

Union. Il appert que les argents ont été remis à deux personnes qui se sont présentées aux bureaux de Western Union sous l'identification des bénéficiaires désignés par Deblois. Ces personnes avaient les numéros de code leur permettant d'avoir accès aux argents transférés par Deblois. La perte de Deblois est due à une fraude commise à son égard et non pas à une erreur ou un défaut d'exécution de contrat de la part de Western Union. Le tribunal ajoute qu'il est à déconseiller de donner à des personnes inconnues des codes ou des numéros de carte de crédit donnant accès à des sommes d'argent.

Deblois c. Western Union Financial Services Canada Inc., 2006 QCCQ 355 (IJC), 18 janvier 2006.

Échange de courriels disgracieux et intimidants – injonction interlocutoire

Après avoir pris connaissance d'un échange de courriels transmis par la défenderesse au demandeur et à sa famille, le tribunal accorde la requête en injonction interlocutoire. Il précise :

Le demandeur et sa famille sont en droit de mener une vie paisible. C'est un droit clair et évident. L'envoi de tels courriels par la défenderesse, tant à lui-même qu'à d'autres personnes tendant à ternir sa réputation, lui cause un préjudice grave et sérieux. Il a aussi droit au respect de sa vie privée. La transmission de tels courriels, tenant des propos disgracieux et intimidants pour reprendre les mots du juge Ross Goodwin, j.c.s. qui a rejeté l'injonction au stade interlocutoire provisoire, constitue une intrusion déplacée dans la vie privée du demandeur particulièrement en s'attaquant à sa réputation personnelle.

Leclerc c. Leclerc, 2006 QCCS 329 (IJC), 19 janvier 2006.

Poste à poste, mise à disposition du public, copie privée – France

Dans une décision rendue le 8 décembre 2005, le Tribunal de Grande Instance de Paris a rejeté

une accusation portée contre un internaute pour avoir téléchargé et télédéchargé des fichiers d'œuvres musicales et cinématographiques sur Internet. Le tribunal s'appuie sur les articles du Code de la propriété intellectuelle disposant que les bénéficiaires de droits ne peuvent interdire les reproductions strictement réservées à l'usage privé de la personne qui les réalise et non destinées à une utilisation collective. La décision affirme qu'il n'existait en l'espèce aucune présomption de mauvaise foi. Elle s'appuie sur le fait que le logiciel utilisé permet également d'accéder à des œuvres du domaine public et que le prévenu s'est borné à seulement placer une copie des œuvres dans des répertoires partagés accessibles à d'autres utilisateurs. Le logiciel Kazaa ne permettant pas de distinguer les fichiers d'œuvres selon leur catégorie juridique, l'absence de vérification préalable sur les bases de données des éditeurs de la possibilité de disposer librement d'une œuvre ne saurait caractériser une intention coupable.

Monsieur G Anthony c. Société civile des producteurs phonographiques (SCPP), Tribunal de Grande Instance de Paris, 8 décembre 2005, Juriscom.net.

Applicabilité de la législation sur les données personnelles aux moteurs de recherche – France

Sur Internet, tout utilisateur du réseau peut accéder à l'information qui y circule sans que les personnes concernées en soient informées. Dans une analyse sur l'applicabilité de la législation sur la protection des données personnelles aux moteurs de recherche, l'auteur se demande si les personnes dont le nom patronymique est répertorié par les moteurs de recherche sur Internet pourraient invoquer la loi pour s'opposer au traitement de ces données. Laissant complètement de côté le caractère public de ces données de même que la question de savoir si les informations ainsi dans l'espace public du web sont véritablement des données relatives à la vie privée des personnes, on s'attache à démontrer la nécessité de la protection des données personnelles. En revanche, l'on convient de la difficulté d'appliquer les principes classiques de la protection des données personnelles. On relève en particulier que « toute

liberté de circulation de l'information s'accompagne d'une absence indéniable de confidentialité. »

Marie-Pierre FENOLL-TROUSSEAU, « Les moteurs de recherche : un piège pour les données personnelles » *Communication commerce électronique*, janvier 2006, p. 22-25.

Relations du travail et Internet – France

Le Forum des droits sur l'Internet a publié un dossier qui dresse un état des lieux des questions législatives et jurisprudentielles soulevées par l'impact du développement des nouvelles technologies sur les relations de travail.

On y aborde les enjeux de l'utilisation des technologies lors de la relation individuelle de travail, de l'embauche (candidature en ligne, tests, échanges de courriels), à l'exécution du contrat de travail (cyber-surveillance) jusqu'à la rupture de ce contrat. L'utilisation des moyens de communication électronique est aussi examinée dans le cadre des relations collectives du travail (élections syndicales par voie électronique, utilisation des moyens de communication électronique par les institutions représentatives du personnel, l'information collective des salariés).

Forum des droits sur l'Internet, *Dossier-Relations du travail et internet-panorama législatif et jurisprudentiel*, 26 janvier 2005.

Les systèmes d'enchères inversées reposent sur le principe d'une mise en concurrence sous forme d'appel d'offres au moins disant et se développent de plus en plus sur Internet. L'apparition de systèmes électroniques d'enchères inversées de recrutement, où un employeur peut proposer une offre d'emploi en ligne et laisser les candidats y postuler pour tirer les salaires vers le bas, suscite plusieurs inquiétudes. Une proposition de loi visant à interdire de tels systèmes pour la conclusion de contrat de travail a été déposée à l'Assemblée nationale.

Forum des droits sur l'Internet, *L'interdiction des enchères électroniques inversées de recrutement en discussion*, 26 janvier 2006.

Transferts de données à caractère personnel vers des pays non membres de l'UE – France

En France, en vertu de la *Loi du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés* (art. 68-69), un responsable de traitement ne peut transférer des données à caractère personnel vers un "pays tiers" que si cet État assure aux personnes concernées par ces données un niveau de protection adéquat de la vie privée et des libertés.

La Commission nationale de l'informatique et des libertés (CNIL) a publié un guide sous forme de questions-réponses concernant les transferts de données à caractère personnel vers des pays non membres de l'Union européenne. Ces questions concernent, entre autres, les conditions et les règles à respecter pour effectuer un transfert, les sanctions applicables au manquement des règles, la qualification de responsable de traitement ou sous-traitant, l'obligation d'informer les personnes concernées du transfert de leurs données, le statut des législations de protection des données personnelles dans le monde, le contrat utilisé pour encadrer un transfert dans un pays tiers qui n'accorde pas une protection adéquate et les conditions d'utilisation des exceptions prévues dans la loi.

CNIL, *Transfert de données à caractère personnel vers des pays non membres de l'Union européenne*, janvier 2006.

Nom de domaine « .eu » – Europe

La première phase d'enregistrement des noms de domaine européens est réservée, entre autres, aux titulaires de marques de commerce enregistrées (dans au moins un pays de l'UE). Le 10 janvier dernier, Eurostar UK, la SNCF et la SNCB ont assigné en référé le diamantaire belge Eurostar Diamond Traders NV devant le tribunal de commerce de Paris, afin qu'il retire sa demande d'enregistrement du nom de domaine Eurostar.eu. La demande d'enregistrement du diamantaire précédait de 6 minutes celle de Eurostar UK. Les juges ont rejeté la demande de Eurostar UK au motif que les

conditions du référé n'étaient pas réunies. L'accord de coexistence organisant l'utilisation respective des marques « Eurostar », accord sur lequel s'appuyait Eurostar UK, n'a pas été jugé suffisant.

Pour Jean-Baptiste Sirand, il s'agit avant tout d'un arrêt d'espèce qui devrait néanmoins inciter les titulaires de droits de propriété intellectuelle à prêter encore plus d'attention aux noms de domaine. En effet, souligne-t'il,

véritables jumeau du droit de marque, il est encore concevable de déposer un nom de domaine sans détenir la marque correspondante mais beaucoup moins de détenir une marque sans être titulaire du (des) nom(s) de domaine associé(s). L'intérêt à être titulaire du nom de domaine correspondant à sa marque est double : il est juridique (prévention) parce qu'il évite une atteinte potentielle à son droit de marque et il est économique (promotion), Internet constituant un moyen de communication dont l'impact n'est plus à démontrer. Le nom de domaine est donc une valeur à protéger. Cette protection peut s'exercer a priori, par une politique de dépôts préventifs bien menée et une surveillance régulière, comme en matière de marques.

Jean-Baptiste Sirand, *Eurostar.eu : rien ne sert de rouler vite, il faut déposer à point*, Droit & nouvelles technologies, 30 janvier 2006.

Serge Courrier, *Eurostar.eu, le tout premier nom de domaine européen devant la justice*, juriscom.net, 30 janvier 2006.

Vidéo « quasi à la demande » – Europe

Le 13 décembre 2005, la Commission européenne a adopté une proposition de directive révisant la directive « télévision sans frontières » de 1989, afin de tenir compte de la rapide évolution technique et commerciale du secteur audiovisuel européen. L'objectif est de soumettre l'ensemble des services de contenu audiovisuel, quel que soit leur technique de diffusion, aux obligations imposées aux services de radiodiffusion. On veut ainsi élargir le champ de la directive « télévision sans frontières » aux services de « vidéo à la demande ».

Le législateur européen distingue également un autre mode de diffusion, la vidéo « quasi à la demande ». Cette notion soulève des questionnements et des incertitudes. En examinant une décision de la Cour de Justice des Communautés Européennes du 2 juin 2005 dans l'affaire Mediakabel (Affaire C-89/04), l'auteur conclut à « une tendance consistant à élargir le champ de la radiodiffusion télévisuelle afin de soumettre certains services fournis « à la demande » à la réglementation de l'audiovisuel. Car la question centrale est finalement de savoir jusqu'où s'étend le droit de l'audiovisuel, dont certains sont tentés de se départir ».

Anne-Catherine Lorrain, *La vidéo « quasi à la demande » : plutôt « pas à la demande » qu'« à la demande »*, Juriscom.net, 11 janvier 2006.

À signaler

La transformation de l'administration publique par les technologies de l'information est souvent citée comme exemplaire dans les pays tels le Danemark, la Suède, la Norvège et la Finlande. L'édition de février 2006 du bulletin *e-Veille* du ministère des Services gouvernementaux du Québec est consacrée à la Scandinavie, une région à l'avant-garde en matière de gouvernement en ligne.

This newsletter is intended to keep members of IT.Can informed about Canadian legal developments as well as about international developments that may have an impact on Canada. It will also be a vehicle for the Executive and Board of Directors of the Association to keep you informed of Association news such as upcoming conferences.

If you have comments or suggestions about this newsletter, please contact Professors Teresa Scassa, Chidi Oguamanam and Stephen Coughlan at it.law@dal.ca if they relate to Part 1 or Pierre Trudel at pierre.trudel@umontreal.ca if they relate to Part 2.

Disclaimer: The IT.Can Newsletter is intended to provide readers with notice of certain new developments and issues of legal significance. It is not intended to be a complete statement of the law, nor is it intended to provide legal advice. No person should act or rely upon the information in the IT.Can Newsletter without seeking specific legal advice.

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Proposition de Règlement du parlement européen et du Conseil sur la loi applicable aux obligations contractuelles (Rome 1). La commission européenne clarifie la règle en matière de contrats en ligne quand une partie est consommateur.

Forum des droits sur l'Internet, *Conservation des données de connexion—Nouveau régime issu de la loi anti-terrorisme*, 26 janvier 2006. On y présente les obligations des opérateurs de communications électroniques relatives à la conservation des données de trafic suite à l'adoption en France de la *loi no 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers*.

Le présent bulletin se veut un outil d'information à l'intention des membres d'IT.Can qui souhaitent être renseignés sur les développements du droit canadien et du droit international qui pourraient avoir une incidence sur le Canada. Le comité exécutif et le conseil d'administration de l'Association s'en serviront également pour vous tenir au courant des nouvelles concernant l'Association, telles que les conférences à venir.

Pour tous commentaires ou toutes suggestions concernant la première partie du présent bulletin, veuillez contacter les professeurs Teresa Scassa, Chidi Oguamanam et Stephen Coughlan à l'adresse électronique it.law@dal.ca ou en ce qui concerne la deuxième partie, veuillez contacter Pierre Trudel à pierre.trudel@umontreal.ca.

Avertissement : Le Bulletin IT.Can vise à informer les lecteurs au sujet de récents développements et de certaines questions à portée juridique. Il ne se veut pas un exposé complet de la loi et n'est pas destiné à donner des conseils juridiques. Nul ne devrait donner suite ou se fier aux renseignements figurant dans le Bulletin IT.Can sans avoir consulté au préalable un conseiller juridique.

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