

Paris court decision shows that court proceedings against domain name holder may be useful tool to tackle identity theft **Cybersquatting**
France - Hogan Lovells LLP

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In a [recent decision](#) dated March 2 2017, the Paris Court of First Instance has ordered the transfer of a domain name consisting of the name of a person whose identity had been misused, most likely fraudulently.

The claimant, referred to by the court as Mme X for privacy reasons, was an individual living in France and working as a communications manager.

The defendant was Mme Y, an individual living in France who, according to the Whois records, was listed as registrant of a domain name that was identical to the first name and surname of Mme X under the country-code top-level domain for France, '.fr'.

The claimant was alerted to the fact that the domain name had been registered on November 3 2016 in the name of the defendant. It was resolving to a website selling shoes and accessories online.

On November 21 2016 the claimant sent a cease and desist letter to the defendant requesting the transfer of the domain name to the claimant.

The defendant replied that she could not have registered the domain name and that her identity had also been misused, given the fact that the geolocation of the relevant IP address linked the domain name to Istanbul and the wrong telephone number and email details had been provided. The defendant also provided evidence that she had filed a complaint with the French police authorities and asserted that she would take the necessary steps to transfer the domain name to the claimant.

However, despite several follow-ups, the claimant noted that the defendant had still not requested that [AFNIC](#) transfer the domain name. On December 16 2016 the claimant was therefore authorised to file a fixed date summons ('*assignation à jour fixe*'), which was served on the defendant on December 20 2016, for the domain name to be transferred and the corresponding website disabled. The domain name was then deleted on January 3 2017.

The court noted that, under Article L45-2, 2° of the French Post and Electronic Communications Code (*Code des postes et des communications électroniques*), the registration or renewal of a domain name may be refused or the domain name may be cancelled should it be likely to infringe IP rights or personality rights, unless the domain name holder has a legitimate interest in the domain name and is acting in good faith.

The court considered that surnames are attributes of personality, noting that the domain name was constituted by the first and the last names of the claimant. The court found that the claimant's application was admissible, regardless of the fact that the defendant's identity had also been misused, since only the defendant was entitled to ask for the deletion or transfer of the domain name.

The court underlined that, although the claimant was not a famous personality and was not particularly well known, she was acting as a communications manager and therefore had a relatively significant presence on the Internet, notably on professional social networks. The court also stated that the website in question was likely fraudulent as it did not comply with the regulations on electronic commerce due to the absence of any general terms and conditions of sale nor any legal notices or contact details. It further ruled that there was a risk that the claimant may be held responsible or associated with the commercial activities conducted on the website because the domain name exactly matched the claimant's first and last names and the latter was not particularly common.

This decision highlights the fact that, under French law, a court can order the transfer of a domain name registered or used fraudulently (in this case, because it consisted of the name of a person whose identity had been misused and also because it was resolving to a fraudulent website). While companies used to be the principal victims of cyber fraud with regard to their trademarks and names, the identity of an individual can also be affected, especially when that person is of a certain notoriety.

This decision further illustrates that French court proceedings against a domain name holder can sometimes be a very useful tool to tackle identity theft, contrary to alternative dispute resolution mechanisms such as the [Uniform Domain Name Dispute Resolution Policy](#) (UDRP), which often do not allow for the protection of personal names *per se* (eg, under the UDRP an individual will only succeed in

recuperating their personal name if they are able to prove that they possess either registered or unregistered trademark rights in it).

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