



FRENCH REPUBLIC
IN THE NAME OF THE PEOPLE OF FRANCE

COURT OF APPEALS OF PARIS

5th Division – 2nd Chamber

JUDGMENT OF 22 SEPTEMBER 2017

(No. 131, 12 pages)

Listed on the court's general roll under number: **15/24810**

Decision referred to the Court: Judgment of 27 November 2015 – Court of First Instance,
Paris – 3rd Chamber 3rd division – RG No. 14/08237

APPELANT IN THE MAIN ACTION and
RESPONDENT IN THE INCIDENTAL CLAIM

FRANCE.COM, INC., a company registered under US laws, acting through its legal representative, Mr. Jean-Noël Frydman, who may be served at his official address
3109 Grand Avenue
Miami, FL 33133
United States of America

Represented by François Teytaud, member of the Paris Bar, ID No. J 125
Assisted by Ignacio Diez, member of the Paris Bar, ID No. L 207

RESPONDENT IN THE MAIN ACTION and
APPELLANT IN THE INCIDENTAL CLAIM

G.I.E. ATOUT FRANCE, represented by its chief executive officer, Mr. Mantei who may be served at his official address
79-81, rue de Clichy
75009 Paris

Registered with the RCS of Paris under number 340 709 211

Represented by Jeanne Baechlin of SCP Jeanne Baechlin, member of the Paris Bar, ID No. L 0034

Assisted by Cédric Meiller, pleading on behalf of Selas de Gaulle-Fleurance & Associates, and acting for Jean-François Vilotte, member of the Paris Bar, ID No. K 35

RESPONDENT

The French Government, represented by The Minister of Foreign Affairs and International Development

37, quai d'Orsay

75351 Paris

Represented by Jeanne Baechlin of SCP Jeanne Baechlin, member of the Paris Bar, ID No. L 0034

Assisted by Cédric Meiller, pleading on behalf of Selas de Gaulle-Fleurance & Associates, and acting for Jean-François Vilotte, member of the Paris Bar, ID No. K 35

COMPOSITION OF THE COURT:

After oral briefings, the case was heard on 3 May 2017 in open court before a Court composed of:

Ms. Colette Perrin, President

Ms. Véronique Renard, Counsellor

Ms. Elisabeth Mehl-Jungbluth, Counsellor, designated to complete the Court

who deliberated

Clerk of Court: Ms. Carole Trejaut

JUDGMENT:

After due hearing of all parties

By a judgment made available at the office of the clerk of court, the parties having been previously notified under the conditions set forth in the second paragraph of Article 450 of the Code of Civil Procedure

Signed by Colette Perrin, President, and by Carole Trejaut, Clerk of Court, to whom the original of the present judgment has been delivered by the signing judge.

FACTS, PROCEEDINGS, AND CLAIMS OF THE PARTIES

The US company, France.com Inc., owns the domain name <france.com> which was registered on 10 February 1994.

It later discovered that the Dutch company, Traveland Resorts, had registered the following trademarks:

- a) French trademark No. 3661596 on 2 July 2009 for products and services in classes 16, 25, 35, 36, 38, 39, 41, 42, and 43,
- b) French trademark No. 3661598 on 2 July 2009 for products and services in classes 16, 25, 35, 36, 38, 39, 41, 42, and 43,
- c) French trademark No. 3661602 on 2 July 2009 for products and services in classes 16, 25, 35, 36, 38, 39, 41, 42, and 43,
- d) French trademark No. 3661600 on 2 July 2009 for products and services in classes 16, 25, 35, 36, 38, 39, 41, 42, and 43,
- e) French trademark No. 3661603 on 2 July 2009 for products and services in classes 16, 25, 35, 36, 38, 39, 41, 42, and 43.

Traveland Resorts also holds four Community trademark registrations claiming priority over the corresponding French registrations, namely:

- Registration No. 08791873 of 22 June 2010, filed on 4 January 2010, for various goods and services in classes 16, 25, 35, 36, 38, 39, 41, 42 and 43,
- Registration No. 08791857 of 22 June 2010, filed on 4 January 2010, for various goods and services in classes 16, 25, 35, 36, 38, 39, 41, 42 and 43,
- Registration No. 08791899 of 22 June 2010, filed on 4 January 2010, for various goods and services in classes 16, 25, 35, 36, 38, 39, 41, 42 and 43,
- Registration No. 08791923 of 22 June 2010, filed on 4 January 2010, for various goods and services in classes 16, 25, 35, 36, 38, 39, 41, 42 and 43.

By means of an affidavit of service by bailiff on 19 May 2014, France.com Inc. filed an action against Traveland Resorts before the Court of First Instance of Paris for fraudulent trademark filing in order to obtain the transfer of said marks and compensation for damages.

In the autumn of 2014, all the aforementioned trademarks were assigned to France.com Inc. by virtue of a settlement agreement with Traveland Resorts. A declaration of the assignment was recorded with the Office for Harmonization in the Internal Market (OHIM) on 18 May 2015 with respect to Community registrations, and with the National Register of Trademarks on 3 July 2015 with respect to French trademarks.

On 14 April 2015, the French government and the GIE Atout France (tourism development agency of France) intervened in the proceedings seeking a judgment in favor of the French government for a violation of its sovereignty rights in the name of its territory by Traveland Resorts, and requesting the transfer in favor of the French government of the trademarks in question, as well as the infringement of its rights by France.com Inc., and requesting the transfer of the domain name <france.com>; or in the alternative, a prohibition to dismiss, in addition to claims of unfair competition to the prejudice of the interests of the GIE Atout France.

On 19 June 2015, France.com Inc. withdrew its action against Traveland Resorts, which the latter accepted on the same day.

On 3 September 2015, the French government filed supplemental pleadings seeking the cancellation of the five French trademarks in dispute assigned to France.com Inc. and requesting that the latter be ordered to declare surrender of the four Community trade mark registrations at OHIM.

By means of an order dated 2 October 2015, the pre-trial judge dismissed France.com's action against Traveland Resorts, rejected the plea of lack of material and territorial jurisdiction in favor of the [Miami] commercial court and referred the entire case to the [TGI Paris] court ruling on the merits, the examination of the claims, analyzed as grounds for inadmissibility or questions on the merits, as such excluded from the jurisdiction of the pre-trial judge.

By a judgment after trial dated 27 November 2015, the Court of First Instance of Paris has:

- declared admissible the intervention of the French government and the GIE Atout France,
- noted the GIE Atout France's interest to act ,
- rejected the defense that the court was incompetent to hear the case and that only US courts had jurisdiction to try the case,
- dismissed the plea alleging that the action had already prescribed to claim the domain name <france.com>, the French trademarks, and the community trademarks,
- ordered France.com Inc. to transfer to the French government, within two months after the service of the judgment and subject to a penalty of EUR 150 per day of delay and per trademark thereafter, the following trademarks:

- No. 3661596 of 2 July 2009,
- No. 3661598 of 2 July 2009,
- No. 3661602 of 2 July 2009,
- No. 3661600 of 2 July 2009,
- No. 3661603 of 2 July 2009,
- No. 08791873 of 22 June 2010 filed on 4 January 2010,
- No. 08791857 of 22 June 2010 filed on 4 January 2010,
- No. 08791899 of 22 June 2010 filed on 4 January 2010,
- No. 08791923 of 22 June 2010 filed on 4 January 2010,

for the goods and services referred to in each of the registrations, the court reserved the right to liquidate such penalties,

- held that upon the decision's becoming final, it will be transmitted to the National Institute of Industrial Property (INPI) at the initiative of the first party to take action, in order for it to be recorded in the national trademark register,
- ordered France.com Inc. to transfer the domain name <france.com> to the French government, within two months after service of this judgment and subject to a penalty of EUR 150 per day of delay thereafter,
- reserved the right to liquidate all penalties,
- dismissed the unfair competition claim of the GIE Atout France,
- ordered France.com Inc. to pay costs,
- declared no compensation for legal fees,
- declared no provisional execution.

On 10 December 2015 France.com Inc. appealed the decision through a notice of appeal filed with the clerk of court.

By order on 24 November 2016, the case management judge:

- declared as inadmissible and unfounded the claims of France.com Inc. (that the court lacks jurisdiction; that the domain name <france.com> must be unblocked; that the GIE Atout France must justify the exercise of its public service task; that provisional indemnity must be granted; that the five questions on constitutionality must be transmitted to the Supreme Court, and that four prejudicial questions be referred to the Court of Justice of the European Union (CJEU) for a preliminary ruling,
- consequently, rejected all the claims of France.com Inc.
- dismissed the counterclaim of the French government as represented by the Minister of Foreign Affairs and International Development and the GIE Atout France seeking to obtain an order for a provisional execution of the 27 November 2015 judgment with respect to the transfer of the domain name <france.com>,
- ordered France.com Inc. to pay the GIE Atout France the sum of EUR 5,000 pursuant to Article 700 of the Code of Civil Procedure,
- reserved costs.

In the notices electronically served on 6 September 2016, France.com Inc. requested the court, pursuant to the provisions of Articles 2 and 72 of the 1958 Constitution, Article L.3111-1 of the General Code of Public Property, Articles 325 and 700 of the Code of Civil Procedure, Articles 9, 1382 and 2276 of the Civil Code, Articles L.711-3, L.711-4, L.712-6 and L.714-3 of the Intellectual Property Code, Articles 6ter and 10 of the Paris Convention 1883, the Regulation on the Community Trademarks, Ordinance No. 2015-1682 of 17 December 2015, under an eight-page pleading seeking to have the court make a number of declarations which do not constitute legal proceedings within the meaning of the Code of Civil Procedure, requesting the following:

- to grant all their requests and declare them well-founded, principally,
- reverse the judgment in its entirety,
- declare that it follows from the Constitution that the official name of the geographical entity "France" is "French Republic", and that the official name of its administration is "The French State" and that the French Republic has no tangible or intangible property right over the word "France"
- set aside the judgment insofar as it erroneously held that "the French State has rights over the name 'France', which designates a sovereign state and identifies a country with its name,
- declare that due to the fact that the French government has intervened before a civil court, it is therefore erroneous to invoke the benefit of administrative prerogative; all its claims must be based solely on Book VII of the Intellectual Property Code,
- dismiss the argument of the French government invoking Article L.3111-1 of the General Code of Public Property, which provides that "the property of public persons referred to in Article L.1 which are within the public domain, are inalienable and imprescriptible", therefore, a provision of administrative law, submitted for the first time on appeal, must be

heard by the administrative court which has jurisdiction over cases where the state invokes public interest,

- partially quash the judgment appealed in so far as it declared admissible the intervention of the GIE Atout France,
- declare that trademarks are distinctive marks governed by the provisions of Book VII of the Intellectual Property Code, whereas domain names are property rights which are not governed by the Intellectual Property Code; consequently, partially reverse the appealed judgment in support of the action and the request for transfer of the domain name <france.com>, which was not included in the main proceedings in which the French government intervened,
- declare that the French government has no basis to benefits from the provisions of Article 9 of the Civil Code, which covers the private life of natural persons, thus only attributes of their personality as a natural person,
- declare that the domain name <france.com> was exploited in good faith by Mr. Jean Noël Frydman and / or the US company, France.com Inc., for nearly 21 years,
- declare that the French government had actual knowledge for 21 years that Jean Noël Frydman had registered the domain name <france.com>,
- declare that Mr. Jean Noël Frydman, manager of France.com. Inc., was a member of the Advisory Board of French Affairs from 2010 to 2015, an official partner of the GIE Atout France and thus of the French government, and that neither the GIE Atout France nor the French government can argue that by operating the www.france.com website France.com Inc. acted in violation of their rights,

On the French trademarks France.com

- declare that pursuant to Article 72 of the Constitution that “France” is not, in legal terms, a government unit, in fact the word France refers to a geographical area,
- declare that the French government has no prior rights, within the meaning of Article L.711-4 of the Intellectual Property Code, over the name “France”,
- reverse the judgment insofar that it ordered the US company, France.com Inc., to transfer to the French government, subject to a penalty of EUR 150 for each day of delay, and for each trademark, after two months, the French trademarks “France.com” No. 3661596 of 2 July 2009, No. 3661598 of 2 July 2009, No. 3661602 of 2 July 2009, No. 3661600 of 2 July 2009 and No. 3661603 of the 2 July 2009, for the products and services covered by each of the deposits,

In the alternative,

- declare that even if the state could invoke a prior right over the word “France”, that right would be subject to the same laws as other prior right, and that the state cannot claim to have tolerated its use for more than 5 years,
- hold and rule that Article L.711-4 of the Intellectual Property Code only provides for the invalidity of trademarks infringing a prior right, and that it does not allow any claim or transfer,
- declare that Article 6ter of the Paris Convention of 1883, like Article L.711-3 of the Intellectual Property Code, does not apply to the trademark “France.com”,
- reverse the judgment appealed,
- declare that the action of the state with respect to the French trademarks “France.com” is inadmissible pursuant to Article L.712-6 of the Intellectual Property Code,

On the European trademarks “France.com”

- declare that the European trademarks “France.com” are titles independent of the French trademarks France.com even if they are priority rights,
- quash the judgment appealed insofar as it ordered the US company, France.com Inc., to transfer to the French government, within two months after the service of the judgment and subject to a penalty of EUR 150 per day of delay and per trademark thereafter, the European trademarks “France.com” No. 08791873 of 22 June 2010, filed on 4 January 2010, No. 08791857 of 22 June 2010, filed on 4 January 2010, No. 08791899 of 22 June 2010, filed on 4 January 2010, No. 08791923 of 22 June 2010, filed on 4 January 2010, for the goods and services covered by each registration. In any event,
- declare that whatever the rights claimed by the French government, material or immaterial, they cannot be subject to statutory limitation as the judgment appealed held, while such rights were exercised by France.com Inc., which has owned the domain name <france.com> for more than 21 years, publicly and with the full knowledge of the French government,

Alternatively,

- order the French State to reimburse its investments in the amount of US\$ 3,072,000 and US\$ 1,092,000 in salaries, an amount assessed on 1 May 2016, subject to further assessment on the date the judgment becomes final and executory,
- order the French government to pay EUR 3,000,000 for opportunity loss suffered by the loss of its principal assets, its domain name, and trademarks,

In the event that the judgment is set aside on appeal,

- declare that the blocking of the domain name since 20 April 2015 constituted a violation which gave rise to a right of indemnity,
- order the French government to pay EUR 675,000 in damages starting 15 December 2015 subject to further assessment on the date of the judgment,
- award the company, on the basis of Article 1382 of the Civil Code, EUR 1,000,000 in additional damages, to be paid jointly and solidarily by the French government and the GIE Atout France,
- declare that, irrespective of the allegation that “the lack of professionalism of France.com Inc.” has not been established by the GIE Atout France which has the burden of proof, it would not fall within the scope of Article 10 of the Berne Convention, even if this allegation were established, and therefore the GIE Atout France which is “responsible for the official promotion of tourism in France” cannot benefit from this provision when it is not a competitor of France.com Inc.,
- dismiss the incidental appeal of the GIE Atout France,

Counterclaim,

- order the GIE Atout France to pay EUR 1,000,000 in damages for abuse of process,
- order the publication of the judgment in 5 newspapers of its choice and to be paid in advance by Atout France up to a maximum of EUR 5,000 per publication fee, as well as on the homepage of the website www.france.fr for one month in font point size 12,

- declare the French government and the GIE Atout France jointly and solidarily liable to pay EUR 120,000 in accordance with Article 700 of the Code of Civil Procedure, for the entire cost of the proceedings, which may be recovered by its counsel in accordance with the provisions of Article 699 of the Code of Civil Procedure.

The French government and the GIE Atout France, in the notices served electronically on 13 March 2017, requested the court to:

- declare inadmissible the claim for inadmissibility of the intervention of the respondents made by France.com Inc. by means of an order dated 10 September 2016 pursuant to Articles 74 and 954 of the Code of Civil Procedure,
- confirm the judgment insofar as it ordered the transfer to the French government, subject to a penalty of EUR 150 per day of delay and per mark, the nine trademarks registered under the name France.com and fraudulently registered in the name of Traveland Resorts MDV.BV and transferred to France.com Inc., namely:
 - a) Registration No. 3661596 of 2 July 2009 concerning the name France.com for goods in Classes 16 and 25 and for services in Classes 35, 36, 38, 39, 41, 42 and 43
 - b) Registration No. 3661598 of 2 July 2009 concerning the name France.com, associated with the representation of France, which is a heart within it, to designate goods in Classes 16 and 25 and services in Classes 35, 36, 38, 39, 41, 42, and 43
 - c) Registration No. 3661602 of 2 July 2009 concerning the name France.com associated with the representation of France as a heart within it to designate goods in Classes 16 and 25 and services in Classes 35, 36, 38, 39, 41, 42, and 43
 - d) Registration No. 3661600 of 2 July 2009 concerning the name France.com associated with the representation of France as a heart within it to designate the goods in Classes 16 and 25 and the services in Classes 35, 36, 38, 39, 41, 42, and 43
 - e) Registration No. 3661603 of 2 July 2009 concerning the name France.com, associated with the representation of France, which is a heart within it, to designate the goods in Classes 16 and 25 and the services in Classes 35, 36, 38, 39, 41, 42, and 43
 - f) Registration No. 08791873 of 22 June 2010 filed on 4 January 2010 for goods in Classes 16 and 25 and services in Classes 35, 36, 38, 39, 41, 42 and 43
 - g) Registration No. 08791857 dated 22 June 2010 filed on 4 January 2010 for goods in Classes 16 and 25 and services in Classes 35, 36, 38, 39, 41, 42 and 43,
 - h) Registration No. 08791899 of 22 June 2010, filed on 4 January 2010, for goods in classes 16 and 25 and services in classes 35, 36, 38, 39, 41, 42 and 43,
 - i) Registration No. 08791923 of 22 June 2010, filed on 4 January 2010, for goods in Classes 16 and 25 and Class 35, 36, 38, 39, 41, 42 and 43,
- subsidiarily,
- annul the five French registrations of the aforementioned marks dated 2 July 2009,
- order France.com Inc. to declare the surrender of the four Community trademark registrations made under priority of the canceled French trademarks at OHIM within one month after the service of the judgment [sic], subject to a penalty of EUR 500 per day of delay and per registration,
- uphold the judgment insofar as it has ordered France.com Inc. to transfer to the French government the domain name <france.com>,
alternatively,
- prevent France.com Inc. from assigning or licensing to any third party, in any form or by any means whatsoever, the domain name <france.com> under a penalty of EUR 10,000,000 per noted transaction,
- prevent France.com Inc. from using the domain name to operate a website that is likely to create confusion in the mind of the public regarding the origin of the product or service or

to infringe on the image and / or the identity of France under penalty of EUR 500,000 per infringement found,

in any event,

- declare the petition against the French government inadmissible in the absence of a challenge to the judicial officer of the state,
- disregard all requests and objections of France.com Inc., ruling on the incidental appeal of the GIE Atout France,
- declare that by using the domain name <france.com> to operate a website exclusively dedicated to tourism in France in conditions devoid of the required professionalism, France.com Inc. has committed acts of unfair competition to the prejudice of the GIE Atout France which is responsible for the official promotion of tourism in France,
- order France.com Inc. to pay the GIE Atout France EUR 20,000 in damages,
- reserve the liquidation of the penalties,
- order France.com Inc. to pay the GIE Atout France EUR 20,000 pursuant to Article 700 of the Code of Civil Procedure,
- order France.com Inc. to pay costs, which includes the costs of registration on 19 January 2015.

The order terminating the proceedings was pronounced on 30 March 2017.

REASONS FOR THE DECISION:

Considering that the appellant's arguments "as a preliminary matter" that (at page 18 of the last pleading) "the present dispute is a civil dispute and not an administrative one, and the judgment rendered on the basis of such must be referred to the Administrative Court", seen from the prayers for relief sought in said pleadings in a request for rejection of the French government's argument that it would invoke the benefit of administrative prerogatives, does not constitute a lack of jurisdiction within the meaning of the Code of Civil Procedure, which was rejected by order of the pre-trial judge on 24 November 2016, on the grounds that it had been invoked for the first time on appeal;

On the interventions of the GIE Atout France and the French government

Considering that the appellant has criticized the trial court for admitting the intervention of the GIE Atout France, arguing that the latter's request, based on Article 10 of the Paris Convention, unfair competition is irrelevant to the main proceedings;

The respondents aver that the appellant's claim is erroneous as it constitutes a procedural exception subject to the provisions of Section 74 of the Code of Civil Procedure and that the appellant would not have raised this exception in its pleadings dated 10 May 2016;

Whereas, however, the claim for inadmissibility of the intervention constitutes a plea for inadmissibility which can be invoked at any time, since it is noted that such objection was in fact raised before the Court and the appellant prayed for such relief in its final pleadings;

Considering that in support of its initial claims, France.com Inc. opposed the registration of the trademarks in question in relation to the domain name <france.com>, the manner of exploitation of which are precisely the subject of the claims of the GIE Atout France;

That the Court was therefore correct in finding that the intervention of the GIE Atout France did possess a sufficient connection with the original action within the meaning of Article 325 of the Code of Civil Procedure and declaring it admissible;

Whereas, moreover, the appellant's final pleadings contain no prayer for such intervention to be declared inadmissible;

On the French and Community brands "France.com"

Whereas, it is understood that, following the sale of the trademarks in question to the benefit of the US company, France.com Inc., the French government resumed its action with respect to the said trademarks;

Whereas, France.com Inc. objects to the judgment for having granted such request and for ordering the trademarks in question to be transferred to the French government subject to a periodic payment of penalties;

Whereas, the French government's action for damages is primarily based on Article L 712-6 of the Intellectual Property Code; that the respondent invokes rights to the name "France" and has stated that it intends to be the proprietor of the trademarks in question; in essence, that those trademarks are misleading or contrary to public policy, that they constitute fraud against the interests of the state in protecting the name upon which its sovereignty is exercised along with its identity, and to bestow such to an American tour operator constitutes an illegitimate monopoly in the general public interest;

On this point, the appellant disputes any fraudulent nature in filing any of the French trademarks in question filed on 2 July 2009, and with regard to the Community trademarks, the law dictates that claims must be filed solely before the EUIPO.

Considering this, according to Article L.712-6 of the Intellectual Property Code, "where registration has been applied for, either fraudulently with respect to the rights of another person or in violation of a statutory or contractual obligation, any person who believes he has a right in the mark may claim ownership by legal proceedings";

Whereas, the claim for a fraudulent trademark does not imply the existence of prior rights to the trademark in question, but of interests knowingly disregarded by the applicant, in addition, a trademark contrary to public order cannot give rise to a claim;

Considering in the present case that the Dutch company, Traveland, has ceased to be a party in this case because of the contract of sale entered into with France.com Inc. for the trademarks; that the Court has no evidence to enable it to assess the circumstances surrounding the filing of such trademarks by Traveland or to ascertain whether such company was pursuing any legitimate interest at the time of filing pursuant to the functions of a trademark, or whether on the contrary, it sought to deprive the French government of a trademark capable of preserving its identity and / or its sovereignty;

That a trademark claim cannot therefore succeed and the judgment must therefore be set aside insofar as it has granted that application;

Considering that, in the alternative, the French government requests for the cancellation of the five aforementioned marks dated 2 July 2009, for the purposes of Articles L711-2, L711-3 and L711-4 Intellectual Property Code, and that France.com Inc. be ordered, subject to a penalty payment to declare surrender to the OHIM (now EUIPO) of the four Community trademark registrations with priority of canceled French trademarks;

That the appellant essentially argues that the foregoing provisions do not apply to the case at bar and that the French government has no right over the name "France", which designates only a geographical area;

Considering that the list of prior rights referred to in Article L711-4 of the Intellectual Property Code is not exhaustive, the name "France" claimed by the French government is likely to constitute a prior right over the trademarks in question, there is a likelihood of confusion on the part of the public;

Whereas, it is not alleged by France.com Inc. that the French government had knowledge of the use of the trademarks at issue by the applicant company before the publication of their assignment in July 2015, an estoppel by acquiescence cannot be raised against the respondent;

Whereas, contrary to the submission of the appellant, the term "France" constitutes an element of identity for the French government which can be likened to the surname name of a natural person; whereas that term refers to the national territory in its economic, geographical, historical, political, and cultural identity, which is intended to promote all the goods and services covered by the trademarks in question; that the suffix ".com" corresponding to the extension of a domain name does not alter the perception such mark;

Considering that the general public will identify these products and services as coming from the French government or at least from an official service with the approval of the French government; whereas the likelihood of confusion is further reinforced by the stylized representation of France's geographical boundaries in the complex marks involved;

Whereas the French trademarks France.com No. 3661596, No. 3661598, No. 3661602, No. 3661600 and No. 3661603, filed on 2 July 2009, should therefore be annulled with respect to all the goods and services;

Whereas, in the case of Community trademarks Nos. 08791873, 08791857, 08791899 and 08791923, it is for the French government to refer the claim for a declaration of invalidity to the EUIPO without ordering France.com Inc. to proceed voluntarily and under penalty with a total surrender of these signs "taking into account the causes of invalidity already claimed by the EUIPO against the trademark France.com";

On the domain name

Considering that, the appellant's argument that the French government, which owns other domain names, "does not need" the domain name <france.com> is inoperative;

Considering that, for reasons identical to those already set forth, this domain name allows access to a website dedicated to tourism in France, undermines the name "France" which is part and parcel of the identity of the French state;

That the judgment will therefore be upheld insofar as it granted the transfer to the respondent, the good faith relied on by France.com Inc., assuming it was established, is ineffective;

That, finally, assuming that the prayer for relief of the appellant's final pleadings contains a prayer for dismissal based on prescription of the action for claiming the domain name, it must be pointed out that a domain name is incorporeal property, which is not susceptible to physical modes of tradition, and accordingly Article 2276 of the Civil Code is not applicable;

On unfair competition

Considering that the GIE Atout France, which claims that it has been vested by the French government with an official task of promoting tourism in France, accuses France.com Inc. of "a form of unfair competition" which consists in operating a website in bad faith which "unnecessarily hinders its task";

Considering, however, that beyond its assertions or assumptions, the GIE Atout France has not shown the existence of unfair competition committed against it; it has neither shown to be performing a public service, more specifically, any misappropriation of customers it claims to suffer or any other infringement upon its image other than by the use of the domain name or the trademarks in dispute;

The judgment will therefore be upheld insofar as it dismissed the application for unfair competition;

On the request of France.com Inc.

Considering that the outcome of the case leads to the rejection of the various claims for indemnity by France.com Inc., it is held that, contrary to the latter's contention, it is not justified by the judicial state agent in the context of the case at bar;

That, in part, the appellant is not justified in seeking damages for abuse of process;

Other applications

Considering that France.com Inc., the losing party, will bear the costs, which will include the court expenses of 19 January 2015;

Considering, finally, it is not necessary to apply the provisions of Article 700 of the Code of Civil Procedure in favor of the GIE Atout France.

ON THESE GROUNDS

Upholding the 27 November 2015 judgment, except in that it ordered France.com Inc. to transfer to the French government, within two months from the notice of judgment subject to the penalty of EUR 150 per day of delay and per mark, the French and Community trademarks France.com Nos. 3661596, 3661598, 3661602, 3661600, 3661603, 08791873, 08791857, 08791899 and 08791923 for goods and services for each registration.

Ruling within that limit and adding thereto,

Canceling the French trademarks France.com Nos. 3661596, 3661598, 3661602, 3661600 and 3661603 filed on 2 July 2009 for all the products and services for each registration.

Refers the Respondents to assume responsibility for Community trademark Nos. 08791873, 08791857, 08791899 and 08791923.

Dismissing the pecuniary claims against the French government.

Rejecting all other claims.

Holding France.com Inc. liable for all costs which will include the court expenses of 19 January 2015.

The Clerk

The President