


Jurisdiction to Enjoin a Foreign Website in the EU, Part II

In a previous post, I had reported how the French *Cour de cassation* ruled  that French courts had jurisdiction to enjoin a foreign based website to carry on illegal activities in France, and to impose a financial penalty in case of non-compliance.

On January 15th, 2009, the same division of the court ruled on another injunction issued in the same case against foreign based defendants. In the first case, the injunction was addressed to the website itself, Zeturf Ltd. This time, it was addressed to the companies hosting the site, Bell Med Ltd and Computer Aided Technologies Ltd.

The issue before the court was again whether the French court had jurisdiction to settle a financial penalty accompanying the injunction. The penalty was a French *astreinte*, that is a sum of money that the defendant must pay per day of non compliance with the injunction. At this stage of the proceedings, the defendants challenged the jurisdiction of the French court to calculate the amount owed to the plaintiff and order its payment (*liquider l'astreinte*), not the jurisdiction of French courts to issue the injunction and the threat of the penalty in the first place.

As in the first case, the *Cour de cassation* answered that the French court had jurisdiction as the court of the place where the injunction was to be performed. Trial judges had found that the injunction was to be performed in France (see the end of my previous post on this).

This is pretty much what the court had ruled in its first decision. But this time, it gave a legal basis: *both* article 22-5 of the Brussels I Regulation and the French rule granting international jurisdiction in enforcement matters to the court of the place of the enforcement (art. 9, para. 2, of French Decree of July 31st, 1992).

This is a puzzling decision: one wonders how both article 22 of the Brussels I Regulation and any provision of French law could found the jurisdiction of French courts at the same time.

If one forgets article 9 of the French 1992 Decree, the judgment is interesting because it decides that the *liquidation* of an *astreinte* belongs to enforcement matters for the purpose of the European law of jurisdiction. What about the issuance of an injunction under penalty of an *astreinte*?