

Antisuit Injunction Denied by French Court

Yesterday, the Paris first instance court (*Tribunal de grande instance*) has denied an antisuit injunction in the high profile *Vivendi* case.

In July 2002, shareholders of Vivendi Universal brought a securities fraud  class action before a U.S. Court in New York against the company and two of its former officers, Jean-Marie Messier and Guillaume Hannezo. Vivendi is a French company, and so are the two officers. But Messier and Hannezo moved to New York to direct corporate operations in the relevant period. It is alleged that they made financial misrepresentations while living and working in the US. Some of the shares were traded in Paris and held by French shareholders (the French press reports that they would amount to 60% of the shareholders). Some other shares were traded on the New York stock exchange and held by North-American shareholders.

The French action was initiated in October 2009 by Vivendi against two French shareholders and ADAM, a French entity specialized in the defence of minority shareholders which participates to the American proceedings. Vivendi sought compensation for the costs of the American proceedings and an injunction ordering the defendants to quit the American class action under the threat of a financial penalty (*astreinte*) of € 50,000 per day.

Vivendi argued that the American action was an abuse of process and that the French court should grant it a remedy. In a nutshell (the full text of Vivendi's complaint can be found [here](#)), the arguments of Vivendi were:

- that a French court was the “natural judge” of a case involving so many French parties (the figures put forward by Vivendi in the complaint were that 40% of the shareholders were French, and held 75% of the shares)
- that, although the defendants were entitled to sue both in the US and in France, they had abused their right by suing in the US for the sole purpose of preventing the natural judge of the dispute from deciding it
- that the defendants were abusing their right to initiate proceedings in the US because they would not bear the consequences of the procedure

should they lose. They would not have to pay the fees of the American lawyers, and they could initiate fresh proceedings in France since an American judgment on a class action was unlikely to be recognized in France.

In a judgment of January 13th, 2010, the French first instance court dismissed Vivendi's claims. The judgment did not address the issue of whether, as a matter of principle, French courts have the power to issue antisuit injunctions. The recent *In Zone Brands* case was not mentioned by the court (which, as a matter of French judicial style, is not surprising). The court only held that it could find no abuse of process on the facts. More specifically, the court defined the abuse of process (*abus du droit d'agir en justice*) as an action which is malicious, in bad faith, or grossly mistaken. On the facts, the court held that no such abuse could be found. First, the dispute was connected to the US, as the officers had acted in the US, and it followed that it was legitimate for the French shareholders to choose to sue in the US. Second, whether the US judgment could ever be recognized in France was irrelevant for the purpose of determining whether the French shareholders had abused the judicial process, as it was too early for the French court to rule on the recognition of the judgment, and as the US judgment could be enforced in the US.

Vivendi has announced that it intends to appeal the judgment.