

Insights

THE 'JUGE DES RÉFÉRÉS' LACKS JURISDICTION TO ORDER THE CLOSURE OF A FRAUDULENT WEBSITE

THE *JUGE DES RÉFÉRÉS* (SUMMARY PROCEEDINGS JUDGE) DOES NOT HAVE JURISDICTION TO ORDER A HOST TO TAKE MEASURES TO PREVENT OR STOP DAMAGE CAUSED BY A FRAUDULENT WEBSITE

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In a ruling dated 2 April 2024 (Tribunal Judiciaire de Paris, 2 April 2024, RG no. 24/51659), the President of the Tribunal Judiciaire de Paris confirmed that he could no longer be seised in *référé* (summary proceedings) against a hosting provider seeking to obtain the removal of a fraudulent website, in accordance with the amendment of the 2004 law on confidence in the digital economy (the LCEN law) in 2021. The President of the Court was asked to prescribe measures to stop the damage caused by a website impersonating a bank. He ruled that the application was inadmissible because he lacked jurisdiction.

In this case, the domain name 'delubac.nellaorganics.com' was being used fraudulently as a relay server linking to the domain name 'beautyfrench.com', which was impersonating the bank DELUBAC ET CIE. This usurpation took the form of a false connection page to the bank's website with the aim of deceiving its customers and obtaining their bank account details.

In order to put a stop to the fraud, the bank summoned the companies OVH and M.J Associés, the hosts of the fraudulent site, to obtain the deletion of the domain name beautyfrench.com, subject to a fine of 100,000 euros per day of delay, and the removal of the website. SAS OVH, as defendant, argued that the *juge des référés* (judge seised in summary proceedings) should decline jurisdiction in favour of the *juge du fond* (judge ruling on the merits).

The question was therefore whether the summary proceedings judge had jurisdiction to order a hosting provider to take measures to prevent or halt damage caused by a fraudulent website it was hosting.

The bank based its application on Article 835 of the French Code of Civil Procedure, which allows a judge to 'prescribe, in summary proceedings, any protective or restorative measures that may be necessary, either to prevent imminent damage or to put an end to a manifestly unlawful disturbance', as well as on Article 6, I. 8. of the LCEN.

This article, which governs the liability of web hosts, allows the court to be asked to order the host to 'take all appropriate measures to prevent damage or to put a stop to damage caused by the content of an online public communication service'. However, in its previous version, Article 6 I. 8. provided for the possibility of applying to the court 'in summary proceedings or on application' to obtain the prescription of measures to prevent or stop the damage. This is no longer the case since Act no. 2021-1109 of 24 August 2021 amending article 6. I. 8 of the LCEN Act, which now provides that such measures may be prescribed by 'the president of the judicial court, ruling in accordance with the accelerated procedure on the merits'.

This amendment to the text therefore removes the jurisdiction of the judge in summary proceedings in this area in favour of that of the president of the judicial court ruling under the accelerated procedure on the merits. Introduced by Decree no. 2019-1419 of 20 December 2019, published as part of the major reform of civil procedure, the aim of the accelerated procedure on the merits is to enable a judgment on the merits to be obtained quickly. Thus, unlike summary proceedings, which give a provisional ruling, a decision handed down under the accelerated procedure on the merits is final. This is an oral adversarial procedure, brought before the judge by summons, but it can only be used in cases expressly provided for by law or regulation (article 839 of the Code of Civil Procedure).

In the case at hand, the court noted that DELUBAC ET CIE's claim was specifically for 'the cessation of damage caused by the content of an online public communication service', a claim that therefore fell 'within the powers of the court ruling on the merits in accordance with the accelerated procedure on the merits' pursuant to article 6 I.8. of the LCEN.

As a result, the judge hearing the case in summary proceedings declared that he did not have jurisdiction to prescribe the measures requested by the bank, which would have to reiterate its request before the president of the court ruling on the merits in an expedited procedure if it wished to obtain the closing of the litigious website.

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