



FRANCE
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Country Report

FRANCE

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1. Legislation:	
Topic:	Consequences in France of the E.U. directive concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).
Who:	E.U. Parliament and Council
When:	Directive n°2002/58 of July 12, 2002
Where:	E.U., France
What happened:	<ul style="list-style-type: none">- Regarding e-mails and SMS : Section L121-20-5 of the <i>Code de la consommation</i>, which was inserted in the Code by the <i>ordonnance</i> of August 23, 2001, provides that distance communication techniques other than automated telephones or fax machines may be used if the consumer has not expressed his/her opposition to such use. This text of law will therefore have to be modified when the directive is implemented, since the directive requires the person's prior consent in such instances. - The draft law on the information society, dated 2001 and transposing the EU directive on e-commerce of June 8, 2000, does not comply with the 2002 directive since it creates registries which the consumers may subscribe when they do not wish to receive unsolicited messages. - Finally, regarding automated telephones and fax machines, French regulations comply with the 2002 directive since the <i>Code de la consommation</i> (Section L121-20-5) requires the individuals' prior consent.
Comment:	The time limit for the directive to be implemented into national law elapses on

	October 31, 2003.
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2. Legislation:	
Topic:	Mandatory use of the French language on foodstuffs
Who:	French Government
When:	Decree n°2002-1025 of August 1 st , 2002
Where:	France
What happened:	This Decree aims at adapting French regulations to the EU directive of March 20, 2000 on labeling, presentation and advertising of foodstuffs. The labeling of foodstuffs should still be in the French language, but it may now also be in one or more other languages.
Comment:	This Decree does not modify the <i>Loi Toubon</i> of 1994, it only makes the scope of the obligation clearer.

3. Legislation	
Topic:	Private copy
Who:	The Commission on private copy
When:	Decision n°3 dated July 4, 2002
Where:	France
What happened:	<p>Under French Law, as explained in our report of April 2001, the possibility to copy for private use a work protected by copyright is an exception to copyright protection. French law provides for special fees such as the one collected on the purchase of recordable media (blank audio or video tapes), the aim of which are to counterbalance the losses incurred as a result of the authorization of private copies.</p> <p>The Commission has not yet chosen to impose such a fee on hard disks and computers.</p> <p>However, the decision of July 4, 2002 has extended the application of the fee</p>

	described above to digital media such as television sets, video recorders and TV decoders allowing the recording of information on a hard disk.
Comment:	Decision n°1 was mentioned in our report of April 2001. Decision n°2, dated December 6, 2001, only provides the conversion into the Euro currency of Decision n°1.

4. Legislation:	
Topic:	Community trademark
Who:	France
When:	Decree n°2002-216 of February 18, 2002
Where:	E.U., France
What happened:	<p>The European regulation of December 20, 1993 on the community trademark requires that each member State designates on its territory one or several tribunal(s) for community trademark matters.</p> <p>France has designated the <i>Tribunal de Grande Instance</i> of Paris (and the <i>Cour d'appel</i> of Paris for appeals). This tribunal will take care of community trademark cases when one of the following three requirements is met :</p> <ul style="list-style-type: none"> - If the plaintiff or the defendant's place of residence is in France or if one party has registered offices in France ; - If the parties agree to bring their dispute before this tribunal ; - If the damage is located in France.
Comment:	The choice which was made in France differs from that made by certain other countries, <i>e.g.</i> , Germany, where 18 tribunals were designated. The purpose of this choice of one single tribunal in France is to avoid variations in case-law in the matters of community trademarks.

5. Legislation:

Topic:	TV advertising for specific economic sectors
Who:	French Government
When:	September 2002
Where:	E.U., France
What happened:	<p>The French decree of March 27, 1992 imposes restrictions on TV advertising for certain sectors such as the press, distribution, the cinema and literary edition.</p> <p>In our reports of 2000 and 2001, the question was debated in France as to the applicability of the 1992 provisions to Internet web sites operating in those sectors.</p> <p>The European Commission required that the restrictions be modified. The new French Minister of Culture and Communication, Jean-Jacques Aillagon, recently announced that the government would consider an “adaptation” of the decree. The prohibition of such advertising should not be abandoned, but it is possible for instance that it will be allowed for TV channels of cable, satellite, digital or local television. The government will also launch a dialogue with the sectors concerned.</p>

6. Legislation:	
Topic:	Electronic signature
When:	<i>Arrêté</i> of May 31, 2002
Where:	France
What happened:	<p>The <i>Arrêté</i> is the final step for electronic signatures to benefit from the presumption of reliability in France. The <i>Arrêté</i> designates the Centre français d'accréditation (Cofrac) to accredit the organizations which will carry out the evaluation of electronic attestation service providers.</p> <p>The organizations wishing to benefit from such a status will have to show that the services they provide comply with the requirements of the Decree of March 30, 2001 (see our report of April 2001). The provider should also show that it complies with the applicable standards, the technical prescriptions and the self-regulation rules applicable in the field of electronic attestation.</p>

7. Case Report	
Topic:	Premium sales and sale at a loss
Who:	Société Olitec
When:	<i>Cour de cassation</i> , criminal section, May 7, 2002
Where:	France
What happened:	<p>French regulations prohibit sales at a loss, <i>i.e.</i>, at a price below the actual price of purchase.</p> <p>The <i>Cour</i> considered in this instance that the regulations on sales at a loss were not infringed by the concurrent sale of a subscription to an Internet provider's services at 1,289 FF and of a modem at 1 FF. The court considered that sale at a loss was to be appreciated with respect to the global sale operation, which was not below cost in this instance.</p>
Comment:	<p>This decision confirms the position of the French administration, which considers that premium sales with an "auto-paying" premium at 1 FF (or 1 □) only constitutes a prohibited sale at a loss when the global value is below cost.</p> <p>This decision may be surprising, since it applies to an instance where one element of the sale is a service (as opposed to goods, Internet access in this instance), which is excluded from the prohibition of sales at a loss.</p> <p>This decision differs from the Esso case mentioned in our case report of May 2002. Both decisions were issued by the <i>Cour de cassation</i>, but they were taken by two different sections of the court : the Esso case was judged by the commercial section, whereas the Olitec case was judged by the criminal section. However, the two sales in the Esso case were successive, and it would be interesting to know whether the criminal section would maintain the same approach as in the Olitec matter in such instance.</p>

8. Case Report	
Topic:	Advertising for tobacco products and Formula One
Who:	Roy de Puyfontaine and EMAP v/ Comité national contre le tabagisme
When:	<i>Cour d'appel de Paris</i> May 3, 2002

Where:	France
What happened:	<p>The magazine <i>Auto-Journal</i>, specialized automobile information, published a special issue on Formula One racing.</p> <p>The publisher was sued by a committee against addiction to smoking on the ground that the magazine made illicit advertising for tobacco products by illustrating its articles with over 30 photos of pilots and cars sponsored by tobacco trademarks. The photos were taken in countries where advertising for tobacco products is not prohibited.</p> <p>The court rejected the committee's action by making a distinction between general information and commercial information. Only the latter is prohibited when tobacco products are at stake.</p> <p>The court considered that there was no direct advertising, since (i) the publication of the photos was not linked to the purchase of advertising space, and (ii) there was no corporate or commercial link between the publisher of the magazine and the tobacco manufacturers.</p> <p>Further, there was no indirect advertising or propaganda, which is the promotion of a general product (tobacco) instead of a specific trademark, reminding of tobacco or tobacco-related products, as in this instance the only aim of the publication was the readers' information on sports events and not the promotion of tobacco trademarks.</p>

9. Case Report	
Topic:	Misleading lottery material
Who:	<ul style="list-style-type: none"> - Association UFC Que Choisir et autre [Mr. Bossa] v/ Société Maison française de distribution - Mr. Stéphane Marchewka v/ Société Maison française de distribution
When:	<i>Cour de cassation</i> , September 6, 2002
Where:	France
What happened:	In both instances, the distance sale company MFD sent to the plaintiffs (Mr. Bossa in one instance and Mr. Marchewka in the other) a letter informing them that they had won 105,750 FF (approximately \square 16,120). They were later informed that they had actually only been chosen through a "pre-draw" and had not won the prize at the final draw.

	<p>- In the first instance, the court of appeal considered that the damages could not amount to the prize which Mr. Bossa believed he had won. The court of appeal thus granted 5,000 FF in damages to the plaintiff. However, the <i>Cour de cassation</i> considered that, by informing an individual that he/she had won a sum of money without informing him/her of the existence of an element of chance, the company had entered into a quasi-contract. Under such a quasi-contract, the company which advertised the winning had to deliver such winning. The amount of 5,000 FF in damages was therefore not sufficient. The matter will consequently be tried again before a different court of appeal.</p> <p>- In the second instance, the plaintiff's request (Mr. Marchewka's) was rejected on the ground that his claim was made in bad faith and that he had suffered no prejudice. He was therefore granted no damages and he had to pay 1 FF in nominal damages for abusive court action.</p>
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10. Case Report	
Topic:	Trademarks and freedom of speech
Who:	Greenpeace v/ Esso and v/ Areva
When:	<i>Tribunal de grande instance de Paris</i> July 8, 2002 and August 2, 2002
Where:	France
What happened:	<p>These two decisions should be linked to the Danone decision of July 4, 2001 mentioned in our report of October 2001.</p> <p>Again, as in the Danone instance, the ecological association Greenpeace protested against the practices of large companies : Esso and Areva.</p> <p>1/ On July 8, 2002, the <i>Tribunal de grande instance</i> of Paris ordered Greenpeace to remove the parody of the Esso logo (E\$\$O) used on its website on the ground that it constituted an infringement of its trademark rights.</p> <p>It is interesting to note that only Greenpeace was ordered to comply with the court order, whereas the company hosting the website was only ordered to act if Greenpeace did not remove the logos from its site. Such a decision is conform to the French law of August 1st, 2000 on the liability of Internet service providers.</p> <p>2/ On August 2, 2002, the same court, in summary proceedings, reached a different conclusion by refusing to order the removal from the Greenpeace</p>

	<p>website of Areva's logo.</p> <p>The judge considered that this parody was based on the freedom of speech and that it did not qualify as unfair competition : in no case could Greenpeace be mistaken for Areva (a nuclear energy company).</p>
Comment:	See the ads on the last page of this report.

11. Case Report	
Topic:	Misleading advertising for mobile phones
Who:	UFC Que Choisir v/ Orange, SFR and Bouygues Telecom
When:	<i>Tribunal de Grande Instance de Nanterre</i> , May 22, 2002.
Where:	France
What happened:	<p>Orange, a mobile phone company, advertised its telephone communication packages as offering "one hour of communication". An association for consumer protection brought an action against the operator for misleading advertising because the first minute of communication was indivisible and the operator actually charged the user per blocks of 30 seconds.</p> <p>The court held that the advertisement was misleading, even though Orange did provide detailed information on its prices in a separate document.</p> <p>On the same day, the tribunal held the same decision against the three French mobile phone operators (Orange, SFR and Bouygues Telecom).</p> <p>This decision led to a recent change in the pricing policies of the three operators, which from September 2002 on will charge their users per second of communication.</p> <p>However, to compensate the loss incurred by this forced modification, the phone companies have raised their prices on other services, which has led to an action against Orange on the ground of abuse of dominant market position before the <i>Conseil de la concurrence</i>.</p>
Comment:	To be followed...

12. Case Report	
Topic:	Misleading advertising
Who:	Société Sorodis v/ Fédération française des combustibles et des carburants
When:	<i>Cour de cassation</i> , June 4, 2002.
Where:	France
What happened:	<p>An ad provided “<u>Cheaper</u> domestic fuel”.</p> <p>The court considered that the ad was misleading because an average consumer could not determine if the comparison (“cheaper”) related to the previous prices offered by the same company or to the prices offered by its competitors. Further, the ad did not provide any period for the comparison whereas the price of fuel is very fluctuant. Finally, it was proven that several competitors who worked in the same area offered cheaper prices during the same period of time.</p> <p>As a consequence, the advertiser had to pay □ 3,000 in damages to the competitor who had launched the action against him.</p>

13. Case Report	
Topic:	Distance sales
Who:	Mr. Mathieu v/ Mr. Aramini
When:	<i>Cour d’appel d’Aix-en-Provence</i> October 17, 2001
Where:	France
What happened:	<p>Mr. Mathieu organized a commercial operation from his store : he telephoned individuals and invited them to come to his store and retrieve a present. Once the individuals arrived at the store, they were offered to purchase furniture, for which they paid immediately.</p> <p>The court considered that the sale, since it started through a telephone solicitation, was a distance sale and that under this qualification the purchasers were entitled to a seven-day period before they made any payment. The defendant had consequently infringed the regulations on distance sales.</p>

14. Case Report	
Topic:	Sales outside official sales periods
Who:	X
When:	<i>Cour d'appel de Paris</i> March 22, 2002
Where:	France
What happened:	<p>French regulations only allow companies to conduct sales during the official sales periods (twice a year for a maximum time of six weeks). Sales (<i>soldes</i>) are defined as the sale at a reduced price, aiming at the accelerated sale of the items in stock, and advertised as such.</p> <p>After the official summer sales period, a company organized a commercial operation leading to discounts on half of the items offered. The operation was announced through an ad placed in the windows, reading “And to finish... 3 prices, 50 F, 100 F, 150 F”. Inside the store, a sticker placed over the previous price provided the new discounted price.</p> <p>The company was charged for conducting sales outside the official sales periods. The company argued that it had not advertised any discount in its ad, and that the terms “to finish” referred to end of the summer season.</p> <p>The court of appeal, however, considered that the ad revealed the company’s aim to sell its remaining stock through discounted prices and that the regulations on sales had been infringed.</p>
Comment:	<p>The same Paris court of appeal issued two other decisions on the same issues of sales organized outside the sale period : February 27, 2002 H & M and March 26, 2002 Naf Naf.</p> <p>In both instances, the court held that there was no illicit sale because the advertising of the discount did not mention any aim at accelerating the sale of the stocks. The items were available throughout the promotion period and afterwards.</p> <p>It is interesting to note that the French administration takes a stricter approach, since it considers that there may be an illicit sale if the promotion aims at the accelerated sale of the stocks, even if this purpose is not advertised for.</p>

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