

FOCUS IP

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DATABASE: VALIDATION OF THE DATA SCRAPPING OF THE LEBONCOIN WEBSITE DESPITE SUBSTANTIAL INVESTMENTS RECOGNISED



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- **High Court of Paris, 3rd chamber, 2nd section, 21 February 2025, no. 21/09261**

IMPACT: *In this ruling, the court makes an enlightening assessment of the evidence required to demonstrate substantial investment in a database, an essential condition for obtaining protection under the sui generis right.*

Despite the successful demonstration of the investments made by the plaintiff for the recognition of the protection of its database, the Court ultimately ruled out any infringement on the grounds that the competing service contributes to a better structuring of the information and provides added value. The Court thus validated the competitor's repeated and massive extraction of ads from the Leboncoin site.

➤ **The facts**

The Company LBC FRANCE ("LBC") operates the *Leboncoin* classified ads website, including a category dedicated to real estate listings, which is visited monthly by 14 million Internet users.

The Company DIRECTANNONCES is accused of selling, through a subscription system, a compilation of real estate listings accessible via its interface. Some of these listings are obtained by extracting them from the Leboncoin website using software, a method also known as "scraping".

On June, 15, 16 and 17, LBC had a seizure of counterfeit goods carried out on the premises of DIRECTANNONCES before filing a writ of summons before the Paris Judicial Court on July, 2 2021, in order to obtain, among other things, a halt to the extraction and use of the advertisements obtained through this method, on the basis of (i) the existence of unfair competition acts, (ii) infringement of its *sui generis* rights and (iii) breach of its Terms and Conditions of Use.

➤ **Details on the statute of limitations**

After pointing out that the starting point for the statute of limitations is the day on which the facts came to light, even if they span over time¹, the Court set the

¹ Civ. 1. 15 Nov. 2023, no. 22.23-266 and Com. 15 Nov. 2023, no. 22.21-878

starting point as January 4, 2012, the date of LBC's first formal notice.

It then makes a distinction according to the basis of the claims:

- (i) **Unfair competition:** the facts consisted of the commercialization of the listings, which the Court said constituted a "*single act spanning over time*", so that this claim has been time-barred since 4 January 2017.
- (ii) **the *sui generis* right:** the judges consider that "*the Leboncoin database is constantly being renewed (...) under these conditions, the alleged acts of extraction do not constitute a single act spanning over time but rather the reproduction at different dates of extractions of different content, so that each of them is a distinct event*"; the LBC company is therefore not time-barred for extractions that occurred less than 5 years ago.
- (iii) **Infringement of the Terms and Conditions of Use:** the same reasoning applies as for infringement of *sui generis* rights.

➤ **Protection by *sui generis* right: illustrations of evidence to be provided to demonstrate the substantial investment required by law**

In order to benefit from protection under the *sui generis* right, the Court reiterated the requirement for "*substantial financial, material or human investment*" by the producer of the database², which must relate to "*the resources devoted to researching existing elements and assembling them in the said database, excluding the resources used to create the constituent elements*".³

The Court then conducts a meticulous assessment of the evidence provided to demonstrate these investments and highlights nature of the documents supplied:

- several "*certificates from the Director of Management Control*" and the "*Director of Administration and Finance*" stating the overall amounts allocated to major expenditure items;

- an IT expert's report describing and explaining the implementation of these amounts;
- a certificate from the auditor confirming the validity of the information provided.

The Court recognised the evidentiary value of these documents, considering that "*the combination of these elements, emanating from three distinct persons, two of whom are independent of LBC France, sufficiently guarantees the sincerity of the elements internal to LBC France*", thus ruling out the need to obtain other accounting documents or to conduct an expert appraisal of the documents.

On this basis, the Court examined the amounts invested by LBC in the "*ongoing renewal of the content and presentation of the database*", taking into account in particular the costs of storing advertisements, configuration, moderation and maintenance.

An **appendix** lists all the elements taken into account to demonstrate substantial investment, with the amounts allocated.

The Court also ruled on the existence of a "real estate" sub-database by estimating the amounts allocated specifically to this heading.

It then estimates that several hundred thousand euros are invested every six months specifically in real estate (see **appendix**) and considers that "*such a level of investment in this area alone is quantitatively substantial*".

The Court therefore ruled that LBC was indeed entitled to protection of its "*Leboncoin*" database and its "*real estate*" sub-base on the basis of *sui generis* law.

➤ **The absence of any material act infringing the database**

Once the protection of the database was recognised, the Court assesses whether DIRECTANNONCES has actually infringed this right.

² Art. L.341-1 of the Intellectual Property Code

³ CJEU judgments of 9 Nov. 2004 - C-203/02, C-46/02, C-338/02 and C-444/02.

First, it notes that the seizure of counterfeit goods carried out by LBC allowed for the identification of a computer program at DIRECTANNONCES that retrieved listings from Leboncoin several times a day, and that the extractions covered 89% of the listings in the 'real estate' category on the Leboncoin website.

The Court ruled that DIRECTANNONCES had *"repeatedly and systematically extracted and re-used a qualitatively and quantitatively substantial part of the 'real estate' sub-database"*.

In the end, however, the Court ruled out any infringement of the database.

To do this, it relies in particular on

- Recital 47 of [Directive 96/9](#): *"the sui generis right must not be afforded in such a way as to facilitate abuses of a dominant position, in particular as regards the creation and distribution of new products and services which have an intellectual, documentary, technical, economic or commercial added value"*;
- the CV ONLINE judgment of the CJEU⁴: *"it is necessary to strike a fair balance between, on the one hand, the legitimate interest of the makers of databases in being able to redeem their substantial investment and, on the other hand, that of users and competitors of those makers in having access to the information contained in those databases and the possibility of creating innovative products based on that information"*.

The Court ruled that, in this case, the service offered by DIRECTANNONCES *"[contributes] to better structuring of information and facilitating Internet searches, which provides added value"* in that it enables its professional customers to avoid *"carrying out these public data searches themselves"*, emphasising DIRECTANNONCES' investment of 1.5 million euros over four years.

The Court then dismissed one by one Leboncoin's other pleas in law to demonstrate damage:

- *"The number of ads on the site is growing constantly and strongly, as is the number of visitors, while the turnover of LBC France from 2017 to 2021 has risen from 189 to 281 million euros"*. It therefore seems unlikely that advertisers will lose confidence in the site and that it will be hijacked.
- there are no documents *"in support of advertisers' complaints relating to the existence of the [...] service operated by Directannonces, even though it is easy for LBC France to produce them"*.
- no risk that *"the investments in the Leboncoin database could not be amortised because of the activity [...] of Directannonces"*
- no evidence that *"the existence of this service would be likely to divert real estate professionals from the site"*.

For these reasons, the Court considers that the scraping carried out by DIRECTANNONCES does not infringe the *sui generis* rights of LBC and cannot therefore give rise to a conviction.

➤ **Breach of the General Terms and Conditions of Use ("GTCU")**

Finally, the Court examined the enforceability of the Terms and Conditions of Use of the *"leboncoin"* website against DIRECTANNONCES, which expressly prohibit *"any extraction of elements from its database"*.

In this case, the Court noted that for there to be a breach of contract, there must be a contract between the parties

It emphasises that no registration, authorisation or prior acceptance of the GTC is required to access the *"Leboncoin"* website. DIRECTANNONCES cannot therefore be held contractually liable on this basis.

⁴ CJEU, 3 June 2021, C-762/19, CV online

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APPENDIX - Investments demonstrated by LBC France

	Positions	Amounts allocated
"Leboncoin" database	Internal expenditure : - Investment for storage of incoming listings streams, volume of information to be recorded and consultation time requirements - Fraud and moderation team - Configuration, data management and maintenance of the Serenity software (artificial intelligence engine capable of assigning a mark of conformity or non-compliance) - Maintenance and development of categorisation rules, study of the user's journey around the site, design and operation of the search engine by category	- More than 6 million euros
	External expenditure - External communications (sales, marketing and advertising space, visual identity enhancement, advertising and promotional campaigns, website traffic development) - Costs of service providers for handling reports of abuse - Digital mapping, graphic design and IT development costs - Cost of analysing graphic requirements for the presentation and improved accessibility of data.	- More than 100 million euros

Sub-database real estate	External communication	- More than 400,000 euros
	Salary costs	- More than 10,000 euros
	External expenditure	- More than 20,000 euros