Case note **France**

Case name **Société Chalets Boisson v. M. X.**

Case No. **00-46467**

Name and level of court **Cour de Cassation, chambre civile 2**

Members of court **President: M. Ancel, Requiring for State: M. Etienne, General attorney général: M. Kessous and Attorney at law: M. Blondel.**

Date of verdict **30 April 2003**

Brief facts

On the 1st of April 1999 the council of the Society Chalets Boisson entered an appeal before the Cour d'Appel of Besançon against a decision of a Conseil de prud'hommes (employment tribunal). He sent the notice of appeal to the office of the clerk of the Court by e-mail, bearing the e-signature. The defendant sought to have this appeal declared invalid, because the electronic signature was deemed not to identify the signatory.

The Cour d'appel of Besançon accepted this argument and then declared this appeal inadmissible.

Decision

The Cour de Cassation approved the Cour de Besançon decision.

The Court recalled that in order to be valid, an appeal must be signed by its author and that an electronic signature, before the 13th March 2000 Act, is not sufficient to identify the author. This is because any person can type a name at the bottom of an e-mail, and it is not certain that the person whose name is typed at the end of the e-mail was the person that sent it. ■

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■ Comments by Philippe Bazin

Both decisions have an historical interest rather than a legal one.

In both instances they deal with facts prior to the 13th March 2000 Act and its decrees about the proof of an electronic signature. These statutory dispositions make a cultural revolution in the sense that they give to the screen the same value as that of paper, and to the electronic signature the same value as the handwritten signature.

However, judges at the time (and unfortunately still today) did not have any technical understanding about what these notions concretely represent. These that they know, they have practiced for a long time, and they have to do with paper, not the electronic environment.

In the 30th April 2003 decision, the Court adopted a systematic position of mistrust with respect to the electronic signature. It confirms that – culturally – it is the paper, and only the paper, that constitutes the only solid legal guarantee.

In the 28th December decision, the Conseil d'Etat makes an analogous reasoning: the electronic mail is not valid, but can be where confirmation of the content of the e-mail is made on paper.

Both cases are completely in contradiction with the state of law as it results from the 13th March 2000 Act and its decrees. According to Article 1386-3 of the Civil Code: *"the writing on an electronic support has the same proving value than the writing on a paper support."* But it is none the less true that under Article 1316-2 of the Civil Code: *"the judge decides the conflicts of proof… by determining by all means the most probable title whatever the support is."*

Thus these decisions are out of date, because they mistrust the principles relating to electronic support. But they remain valid in the sense that they make clear that there is no superiority of a means of proof over the other. It is eventually the role of the judge to determine the mode of proof that is the most likely to be valid. These decisions recall an obviousness: it is necessary that the culture of the screen develops, so that this culture mixes gradually with our 'old' culture of paper. It is by getting used to the screen and the electronic signature that the judge will determine the hierarchy of fact that it has instituted between the paper proof and the screen proof, a hierarchy that French law expressly excludes.

Philippe Bazin is an Avocat and partner in the business law firm Emo Hébert & Associés. Philippe Bazin is a lawyer and an active member and teacher in training programs. He has specialized in e-laws for several years. He is presently a member of several working groups studying the range technical and legal problems relating to electronic filing.

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