

**Judgment of the 15th Chamber of the Paris  
Commercial Tribunal dated  
31 January 2012**

*Bottin Cartographes v Google Inc. & Google  
France*

*(Unofficial Translation)*

**THE COMMERCIAL TRIBUNAL OF PARIS**  
**15<sup>th</sup> CHAMBER**  
**JUDGMENT HANDED DOWN ON 31 JANUARY 2012**

**BETWEEN:** The COMPANY BOTTIN CARTOGRAPHES, Société par actions simplifiée, whose registered office is at 16, rue Edouard Nieuport 92159 SURESNES (RCS NANTERRE B 494 343 411)

**COMPLAINANT** assisted by Maître Jean-David SCEMAMA, lawyer (D1658) and appearing through SCP Société Civile Professionnelle d'avocats HUVELIN & associates (R285)

**AND:**

1) The COMPANY GOOGLE FRANCE, SARL unipersonnelle, whose registered office is at 38, avenue de l'Opéra 75002 PARIS (RCS PARIS 443 061 841)

2) The COMPANY GOOGLE INC., company of the State of California – USA, whose registered office is at: 1600 Amphitheatre Parkway Mountain View, CA94043 USA, summoned by an order submitted to the Parquet.

**DEFENDANTS** assisted by Maître Joseph VOGEL of SELAS VOGEL & VOGEL, lawyers (P151) and appearing through Maître Carole JOSEPH-WATRIN, lawyer (E791).

**AFTER DELIBERATION OF THE MATTER**

**I. FACTS**

The company BOTTIN CARTOGRAPHES is active on the sector for multi-media mapping and, more specifically, in the domain for the creation of web applications with maps allowing users to locate addresses and create itineraries online.

The maps that are created are intended to feature exclusively on the Internet websites of those companies that are clients of BOTTIN CARTOGRAPHES.

Its clientele is, in particular, made up of local authorities, large retailers, and clients from the property, restaurants and banking sectors.

Subsequent to the purchase in October 2004 of the company Keyhole Corp, a publisher of interactive mapping applications, GOOGLE developed a new geographic search engine named "Google Maps", operational in France as a "beta version" from April 2005 and live from 2007.

This service, which is an online mapping application that allows users to locate addresses, create itineraries and scan points of interest in the proximity of a given address, is offered by GOOGLE for free.

In the case of companies, the API (Application Programming Interface), which allows these services to be installed, is a paid-for service only when used on an intranet but is wholly free for the Internet websites of those companies.

Thus the GOOGLE companies, through their search engine, offer their clientele, consisting of individuals and companies, the possibility of using for free mapping products that are very similar to those offered by the company BOTTIN CARTOGRAPHES in exchange for an annual subscription and fees subject to actual consumption.

The mapping products created by the company BOTTIN CARTOGRAPHES are virtually identical to those offered for free by GOOGLE via the GOOGLE MAPS API, which the defendants define as being “a mapping service that allows a GOOGLE map to be inserted into an Internet website.”

The companies BOTTIN CARTOGRAPHES and GOOGLE have thus been direct competitors in France since 2005, with both of them offering companies mapping and personalized itinerary programs to be inserted into their website, with the maps being drawn up on the basis of geographic information acquired from the companies TELEATLAS, NAVTEQ and local stakeholders.

The claim filed by the company BOTTIN CARTOGRAPHES relates to the conditions for installation of the “GOOGLE MAPS API” and not to the GOOGLE MAPS “portal” or to the paid-for product “GOOGLE MAPS API PREMIER”.

Such situation gave rise to the present complaint.

## **II. PROCEDURE**

The company BOTTIN CARTOGRAPHES, on 24 July 2009, commenced proceedings against the companies GOOGLE France and GOOGLE INC., before the Tribunal of Céans and at hearings on 11 June 2010 and 28 June 2011, asked the Tribunal to:

- HOLD that the complaint of the company BOTTIN CARTOGRAPHES was admissible and well grounded;
- FIND that the companies GOOGLE FRANCE and GOOGLE INC. committed a series of wrongs giving rise to liability by offering abusively low prices with the aim of eliminating competitors on the market and by abusing their dominant position;
- HOLD that this conduct directly prejudiced the company BOTTIN CARTOGRAPHES;
- ORDER the companies GOOGLE France and GOOGLE INC. jointly and severally to pay BOTTIN CARTOGRAPHES the sum of €500,000 as damages in compensation for the prejudice suffered;
- REQUIRE the companies GOOGLE France and GOOGLE INC. to demonstrate that they are implementing with their clients the commercial terms on targeted advertising foreseen in the terms of use of the GOOGLE MAPS API service, subject to a fine of €20,000 per day of delay as from the date of the judgment;
- ORDER that the judgment be published in the daily newspapers WALL STREET JOURNAL, HERALD TRIBUNE, LE MONDE, LE FIGARO, LA TRIBUNE and LES ECHOS.

- ORDER the companies GOOGLE France and GOOGLE INC. jointly and severally to pay the sum of €15,000 on the basis of article 700 of the CPC;
- ORDER the provisional enforcement of the forthcoming judgment;
- ORDER the defendants jointly and severally to pay all costs.

At hearings of 15 October 2010, 25 February 2011, and 18 November 2011, regard had to the latest developments, the companies GOOGLE France and GOOGLE INC. asked the Tribunal to:

- FIND, on the one hand, that the contracts relating to the GOOGLE MAPS services are concluded between the clients and only the company established under American law GOOGLE INC., and, on the other hand, that the company GOOGLE France is not involved in the marketing or provision of these online mapping services.
- Consequently, to EXONERATE the company GOOGLE FRANCE.
- HOLD that the complaints made by the company BOTTIN CARTOGRAPHES on the basis of Article L.420-5(1) of the Commercial Code are inadmissible and to DISMISS them.
- FIND that the company BOTTIN CARTOGRAPHES, who bears the burden of proof, has substantiated neither the market that it refers to nor the supposed position of the company GOOGLE INC. that it alleges, nor the supposed abuse of a dominant position.
- HOLD that the company GOOGLE INC. has not engaged in any malpractice by offering the GOOGLE MAPS API service for free, as follows from the relevant case law.
- FIND that the company GOOGLE INC. does display advertising on certain websites.

Consequently,

- DISMISS all the complaints made by the company BOTTIN CARTOGRAPHES.

In the alternative:

- HOLD that the prejudice for which the company BOTTIN CARTOGRAPHES claims damages has been substantiated neither in principle nor as regards its extent.
- HOLD that an injunction requiring that targeted advertising be displayed on the GOOGLE MAPS service cannot be ordered.
- Consequently, DISMISS all the claims made by the company BOTTIN CARTOGRAPHES.

In the further alternative:

- HOLD that there are no grounds for provisional enforcement as regards the claims made by the company BOTTIN CARTOGRAPHES.

Nonetheless, if, exceptionally, the Commercial Tribunal of Céans, on the one hand, were to order the company GOOGLE INC. and/or the company GOOGLE France to pay the company BOTTIN CARTOGRAPHES a given sum and, on the other hand, were it to consider that provisional enforcement were grounded, to ORDER that such ruling be subject to the prior submission by the company BOTTIN CARTOGRAPHES to the company GOOGLE INC. and/or the company GOOGLE France of a bank guarantee covering all of the monies for which it/they is/are liable).

In any event:

- CONDEMN the company BOTTIN CARTOGRAPHES to pay both the company GOOGLE INC. and the company GOOGLE France the sum of €10,000 on the basis of Article 700 of the CPC.
- CONDEMN the company BOTTIN CARTOGRAPHES to bear all costs.

All of these claims have been the subject of submissions; these have been exchanged before a registrar who made formal note of such in the procedural file or were verified by the judge rapporteur before the parties. During the pleading hearing on 18 November 2011, after having heard the parties' explanations and submissions, the judge rapporteur brought the debate to a close, placed the case in deliberation and stated that the judgment would be handed down to the registrar on 22 December 2011, postponed until 31 January 2012.

### **III. ANALYSIS**

Having taken note of all the points and arguments made by the parties, both orally and in writing, in application of the provisions of Article 455 of the Civil Procedure Code, the Tribunal makes the following concise summary:

The company BOTTIN CARTOGRAPHES argues in the main that:

- Having defined the "relevant market" as being the market for online mapping allowing for the geolocalisation of sales points on company websites and having qualified the prices on offer as abnormally low, the company GOOGLE being unable to avoid these rules and its decision to offer its web applications for free being analyzed as an abnormally low pricing practice within the meaning of Article L.420-5(1) of the Commercial Code;
- The GOOGLE companies' liability arises on the basis of Article L.420-5 of the Commercial Code;
- As well as on the basis of Article L.420-2 of the Commercial Code, namely an abuse of a dominant position.

The companies GOOGLE FRANCE and GOOGLE INC. reply in the main that:

- The company GOOGLE France should be exonerated;
- The clients of the company BOTTIN CARTOGRAPHES (who are companies, for example the FNAC...) are not the end consumers of the mapping client services, and that the case at hand is concerned with inter-company relations (the product being intended for companies);
- The client companies of the company BOTTIN CARTOGRAPHES modify the map products purchased from the latter in order to personalise them and to adapt them to their needs and to the requirements of their own clients and their own website;
- The clients of the company BOTTIN CARTOGRAPHES are supplied within the context of their own commercial activity in order to promote the sales and to satisfy their own consumers by facilitating purchases and by giving a positive image of themselves through their website and the assistance provided. They are therefore intermediaries

that act on the basis of their commercial interests and not on the basis of their personal interests.

- Furthermore, the guidelines of the European Commission relating to Article 82 of the Treaty of Rome (today Article 102 of the TFEU) specifically defined the legal conditions required for predatory practices to be established. In other words, in order to show that GOOGLE Inc. abused or could abuse its alleged dominant position through predatory pricing practices, the following must be specified: the relevant market(s) in question, the fact that the company GOOGLE Inc. has a dominant position, the supposedly abusive practices and, in particular in the case at hand, the fact that the company GOOGLE Inc. is sacrificing profits in the short term, the probability of anti-competitive exclusion from the markets; The company BOTTIN CARTOGRAPHES has not demonstrated that any of these conditions have been met.

#### **IV. IN THIS REGARD THE TRIBUNAL**

##### **1. Regarding the request to acquit the company GOOGLE France**

- Given that it is apparent from an extract from the website “Google.Fr” entitled “Solutions d’entreprise: GOOGLE MAPS” in French that the help offered to companies is described as being given by “GOOGLE MAPS” or “the GOOGLE companies team” without any distinction being made between GOOGLE Inc. and GOOGLE France or any other subsidiary;
- Given that the company GOOGLE France is presented to the French public as being the sole manager of the GOOGLE mapping-related services;
- Given that the case law has relied on appearance in holding that GOOGLE France is implicated irrespective of the internal organization of the group of GOOGLE companies;
- Given that the users of the GOOGLE mapping programs never have direct contact with GOOGLE Inc. a fact which is not challenged by the Defendant;
- Given that GOOGLE France is the only GOOGLE company registered in France that this subsidiary, which was created in 2002 has since the beginning had a commercial team, which still exists in 2008, and offers geolocalisation services to companies, that this team markets the mapping products and services in France, that the general organization of the GOOGLE Group, determined by issues of tax optimization, in no way diminishes GOOGLE France’s status as a “permanent establishment” on the national territory whose commercial conduct is apparent whether in terms of concluding contracts or in developing GOOGLE’s general business in France;

**The Tribunal dismisses the Defendant’s claim that GOOGLE France should be exonerated.**

##### **2. Regarding the infringement of Article 420-5 of the Commercial Code**

- Given that the clients of the company BOTTIN CARTOGRAPHES (who are companies, for example the FNAC...) are not the end consumers of the mapping client services and

that the case at hand is concerned with inter-company relations (the product being intended for companies);

- Given that the client companies of the company BOTTIN CARTOGRAPHES modify the map products purchased from the latter in order to personalize them and to adapt them to their needs and to the requirements of their own clients and their own website;
- Given that the clients of the company BOTTIN CARTOGRAPHES are supplied within the context of their own commercial activity in order to promote the sales and to satisfy their own consumers by facilitating purchases and by giving a positive image of themselves through their website and the assistance provided, and that they are therefore intermediaries that act on the basis of their commercial interests and not on the basis of their personal interests.

**The Commercial Tribunal of Céans dismisses the claims made by the company BOTTIN CARTOGRAPHES on the basis of Article L.420-5 of the Commercial Code to the extent that it has not shown that it supplied its services to non-professional consumers.**

3. Regarding the infringements of Article 420-2 of the Commercial Code

- Given that Article 420-2(1) of the Commercial Code states that:  
*“Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as per the conditions foreseen under Article L 420-1...”*;
- Given that the case law, whether national or European, has held that a company is in a dominant position where it is able to remove itself from market conditions and act more or less independently without taking into account the conduct and the reactions of its competitors;
- Given that the Competition Authority defined the relevant market as “the site where offer and demand for a specific product meet”;
- Given that the GOOGLE companies indisputably enjoy a *de facto* monopoly in France on the search engine market;
- Given that the “surveys” indicate that in France in December 2009 GOOGLE held 89.1% of the search engine market.
- Given that according to consistent case law, a company’s dominant position is established where it has a market share amounting to half or more of the market for given products or services;
- Given that this situation also leads to a dominant position on connected markets, which are the markets for advertising and online mapping;
- Given that whether it be the sector for online advertising (sponsored links) or for online mapping (of the GOOGLE maps “portal” type), there is a clear connection between these sectors and the search engine market;

- Given that the Competition Authority, in an Opinion dated December 14, 2010 found that GOOGLE had “a strong dominant position” on the market for search-based online advertising;
- Given that the Competition Authority also found that the fact that GOOGLE received over 90% of Internet users’ search requests necessarily engendered a dominant position on the market for sponsored links;
- Given that this principal can be seamlessly transposed to online mapping, indeed, GOOGLE MAP’s dominant position being directly linked to GOOGLE’s domination on the search engine market;
- Given that the relevant market, defined as being the market for online mapping allowing for the geolocalisation of sales points on company websites is directly linked to the market for online mapping that is dominated by the GOOGLE companies;
- Given that within the context of the present litigation the market in question is the market for online mapping allowing for the geolocalisation of sales points on company websites;
- Given that this type of specific mapping product corresponds precisely to the products marketed by the company BOTTIN CARTOGRAPHES and those offered via GOOGLE MAPS API;
- Given that the Competition Authority takes to be substitutable, and therefore as being on the same market, those products or services that one could reasonably conclude that users consider them to be alternative means between which they can choose to satisfy a single demand, with the criteria that determines their choice being the sale price proposed by each offeror;
- Given that in the case at hand the companies BOTTIN CARTOGRAPHES and GOOGLE offer, directly in the case of one and through GOOGLE MAPS API in the case of the other, products and services that are evidently substitutable between one another, and that an analysis of the specific characteristics of the mapping programs in question, their technical conditions of use, their marketing and the cost, leaves no doubt regarding the similarity of the products on offer.
- Given furthermore that the GOOGLE companies do not contest these similarities;

**The Tribunal holds that the company BOTTIN CARTOGRAPHES has substantiated beyond any doubt on the one hand the extent of the market share detained by the GOOGLE companies and on the other hand the latter’s domination of the market in question.**

- Given that it is now appropriate to analyze the other criteria relating to the abuse of a dominant position;
- Given that the sale (equal to zero) of the mapping program of the GOOGLE companies does not allow for the production costs that were inevitably generated by developing and distributing the products to be recouped;
- Given that the parties to the present litigation are indeed obliged to obtain the rights for the geographic data (or aerial views) that are necessary for the products from specialist suppliers;



- Given that the company GOOGLE, due to its global coverage, must aggregate data from several dozen suppliers.
- Given that the Cour de Cassation has held that abnormally low pricing practices can on their own be characterized as exploitative abuses where carried out by a company with a dominant position on the market;
- Given that the Competition Authority considers that the intention to exclude competitors from the market is established in law where a company in a dominant position practices sale prices that are inferior to its variable costs;
- Given that, in the case at hand, the conduct of the GOOGLE companies led to all competitors on the market (MAPORAMA) being eliminated, and that furthermore it is evidently part of a wider exclusionary strategy;
- Given that the practice of offering the product for free manifestly has the objective of optimizing over time the commercialization of targeted advertising;
- Given that once all competition has been eliminated, indeed nothing prevents contractual conditions foreseen from the start from being applied and thus the displaying of advertising on online maps obtained for free via GOOGLE MAPS API.;
- Given that the advertisers will be definitively captive to GOOGLE who alone will be the sole provider of the advertising mediums that are online maps;
- Given that this methodology is already in place since GOOGLE currently operates an advertising market that uses online mapping, and that indeed a search on the GOOGLE search engine leads to a GOOGLE MAPS map being displayed, and that such systematization unquestionably influences client companies who rightly consider that choosing the free GOOGLE MAPS API will improve their natural listings on the GOOGLE search engine;

**The Tribunal holds that over and above their dominant position on the markets, the GOOGLE companies have been engaging in abusively low pricing practices, that they have exploited their position in an abusive fashion and that they were only able to do so because they enjoyed a dominant position on the market, and that therefore the four conditions for existence of an abusive dominant position have been fulfilled.**

4. Regarding the prejudice suffered

- Given that the company BOTTIN CARTOGRAPHES is, on the basis of Articles 1382 and 1383 of the Civil Code, well grounded in seeking damages for prejudices caused as a direct result of infringements of Article L.420-2 of the Commercial Code by the GOOGLE companies;
- Given that the misconduct in which the GOOGLE companies engaged led to BOTTIN CARTOGRAPHES suffering a series of prejudices in the form, in particular, of an unquestionable loss of clientele and a restriction of its future expansion;
- Given that it is apparent from the evidence produced that, ever since GOOGLE MAPS and the free use of online mapping applications were made available, the company BOTTIN CARTOGRAPHES has found that expiring contracts have not been renewed,

with its clients preferring the free product offered by GOOGLE, and that the contract terminations as recorded were in favor of the free offering;

- Given that the company BOTTIN CARTOGRAPHES thus substantiates a loss in revenues amounting to €404,204 on the basis of invoices from 2007/2008 that were not renewed in 2009 as a result of clients opting for the free product offering;
- Given that in 2009, BOTTIN CARTOGRAPHES's residual revenues markedly continued to diminish;
- Given that the loss in revenues between 2009 and 2010 is thus estimated to amount to at least €800,000, and that such loss results almost entirely from online mapping;
- Given that over and above this financial prejudice, the sales and marketing teams of the company BOTTIN CARTOGRAPHES on a daily basis found their activity to be increasingly difficult, in particular in their marketing activities; that indeed, the comprehensible reaction of companies that were approached was to compare any paid-for commercial offer with the free offer available from the GOOGLE companies.
- Given furthermore that the conduct of the GOOGLE companies affected the image of the company BOTTIN CARTOGRAPHES and limited any possibility of the company BOTTIN CARTOGRAPHES from developing at a time when the mapping market is expanding strongly;

**The Tribunal orders the GOOGLE companies to pay the company BOTTIN CARTOGRAPHES the sum of €500,000 in the form of damages and interest to repair all the prejudices suffered and orders the publication of the judgment in the newspapers WALL STREET JOURNAL, HERALD TRIBUNE, LE MONDE, LE FIGARO, LA TRIBUNE and LES ECHOS, with the cost for such to be borne by the GOOGLE companies though without the cost of any publication exceeding the sum of €5,000 excluding tax.**

5. Regarding the claim of the company BOTTIN CARTOGRAPHES that the GOOGLE companies be required to demonstrate that they are implementing their commercial terms

- Given that this possibility of displaying advertising is foreseen in the contract;
- Given that it is not for the company BOTTIN CARTOGRAPHES to interfere in relations between the GOOGLE company and its co-contractors;

**The Tribunal dismisses the claim of the company BOTTIN CARTOGRAPHES.**

6. Regarding costs, legal costs and provisional enforcement

- Given that it would be inequitable to let the company BOTTIN CARTOGRAPHES bear the costs that it was obliged to incur within the context of the present proceedings;

**The Tribunal orders the companies GOOGLE France and GOOGLE INC. to pay the sum of € 15,000 to the company BOTTIN CARTOGRAPHES on the basis of Article 700 of the CPC and to bear costs, and orders the provisional enforcement of the ruling except as regards the**

**publications, and without provision of a guarantee, since this alternative claim made by the companies GOOGLE France and GOOGLE INC. has not been grounded.**

## **V. FOR WHICH REASONS**

The Tribunal, rendering an *inter partes* ruling in public at first instance:

- Dismisses the claim made by the companies GOOGLE France and GOOGLE INC. that the company GOOGLE France be exonerated;
- Holds the companies GOOGLE France and GOOGLE INC. jointly and severally liable for abuse of a dominant position;
- Orders the companies GOOGLE France and GOOGLE INC. jointly and severally to pay the company BOTTIN CARTOGRAPHES a sum of €500,000 in the form of damages and interest to repair the prejudices suffered;
- Orders that the present judgment be published in the newspapers WALL STREET JOURNAL, HERALD TRIBUNE, LE MONDE, LE FIGARO, LA TRIBUNE and LES ECHOS without the cost of any publication exceeding the sum of €5,000 excluding tax;
- Orders the companies GOOGLE France and GOOGLE INC. jointly and severally to pay the sum of €15,000 on the basis of Article 700 of the CPC;
- Orders the provisional enforcement of the present ruling except as regards the publications, and without the provision of a guarantee;
- Dismisses all other wider or contrary claims made by the parties;
- Orders the companies GOOGLE France and GOOGLE INC. jointly and severally to bear all costs, including those to be recovered by the registrar calculated to amount to: €105.49 including taxes including VAT of €17.07.
- Heard and pleaded at the public hearing of November 18, 2011, at which presided Mrs. CHARLIER-BONATTI, Mr. LEFEBVRE and Mr. PEYROU.
- Deliberated by those same Magistrates, and stated that the present ruling was handed down to the registrar of this Tribunal, the parties having been advised of such in advance during the proceedings pursuant to the conditions foreseen under Article 450 of the CPC.

The authentic version of this judgment is signed by **Madame CHARLIER-BONATTI, President of deliberations and Mr. LOFF, Registrar.**