

32nd America's Cup Luna Rossa Challenge Application concerning the taking of still images of ITA 94

Jury Case ACJ023

**Applicant: Yacht Club Italiano represented by
Luna Rossa Challenge ("Luna Rossa Challenge")**

An Application in respect of the Protocol governing the 32nd America's Cup

AND

An Application filed by Luna Rossa Challenge concerning the taking of still images of ITA 94

SUBMISSIONS OF AREVA CHALLENGE

(4th February 2007)

These submissions are made by AREVA Challenge ("AREVA") as representative of le Cercle de la Voile de Paris, a Challenger in the 32nd America's Cup pursuant to the Jury's Direction and Timetable dated 1st February 2007 (Jury Notice JN056).

STATEMENT OF FACTS:

1. On 10th January 2007 Stephanie Nadin, AREVA's Media and Communications Manager, was contacted by Frederic Augendre of "Le Parisien" (the "Journalist") to make arrangements for a "day with the team" story. The Journalist indicated that he would like to bring a "Le Parisien" photographer also.
2. In the course of a subsequent conversation and email exchange, Stephanie Nadin reconfirmed the AREVA rule for media photographers: that AREVA does not allow photographers to take pictures of its base and does not take photographers out on the water when our yachts are sailing. Rather, journalists are required to work with Franck Socha, our team photographer, who provides rights-free photographs that have been cleared by AREVA. Franck Socha is well aware of the restrictions on photography in Protocol Article 11.2 and complies with them.
3. The Journalist insisted that he bring his own "Le Parisien" photographer. Stephanie Nadin agreed to relax the AREVA policy to permit photography of the AREVA base, excluding the boat shed and sail loft areas. No on-the-water photography of FRA-93 would be allowed, however. A copy of an exchange of emails, with English translation, is attached as Exhibit A.
4. When the Journalist and his photographer, Philippe De Poulpique (the "Photographer"), arrived at the AREVA base on the afternoon of 29th January, Stephanie Nadin explained the rule again, and it seemed to be accepted. She was later advised by the Journalist that his

Photographer would be with ACM on the next day, while the Journalist was on the water with AREVA. Stephanie Nadin was not aware that the Photographer would be in the racing and training area on an ACM Boat or that he would be photographing FRA-93, and she says she would have objected to ACM had she known.

5. AREVA Challenge's yacht, FRA-93, departed the Base on 30th January with the intention of training and testing, and headed offshore to a location outside of the Race Area, where stronger winds were predicted.

6. While sailing, AREVA was approached by an ACM boat with an ACM captain and the Photographer. Representatives of AREVA on the AREVA tender did not know the Photographer, who had no affiliation with AREVA, and warned the ACM boat to stay away, stating that AREVA objected to the photography of FRA-93. In addition, a call was made from the AREVA tender to Stephanie Nadin's assistant to ask if the presence of an ACM boat with the Photographer was expected, and the response was that it was not.

7. It was apparent that the Photographer had used the ACM boat to get around the AREVA rule restricting outside photographers from taking photos of FRA-93.

8. In response to AREVA's demand that the ACM boat not approach and photograph FRA-93, the ACM boat captain responded that ACM was not subject to restrictions as to where it took photos or how close it could be to the yachts except as required by safety considerations. A member of the AREVA team told the Photographer and the ACM boat captain to go away. The ACM boat remained briefly in the area, but soon departed in the direction of Luna Rossa.

9. Subsequently, about an hour later, a second ACM boat came to the AREVA area, with the same Photographer on board. At that time, having learned of the relationship between the Journalist and the Photographer from the Journalist on board, the AREVA tender permitted the "Le Parisien" Photographer to photograph FRA-93 as she sailed.

10. The ACM boat and driver came and went from the AREVA tender one or two times during the afternoon while FRA-93 was sailing. At one point the Journalist, who has substantial experience regarding the America's Cup and technical yachting matters, asked the Photographer to take pictures of ITA-94, noting she apparently had a new feature that he identified (which is not disclosed in this submission out of respect for Luna Rossa's confidentiality). The ACM boat then went to the Luna Rossa sailing area and may have been in the Luna Rossa sailing area at other times.

11. At no time did any member of the AREVA team instruct the Photographer to take photographs of ITA-94. However, one or more AREVA team members were aware of the Journalist's instructions, and there may have been some informal encouragement of the activity.

12. Subsequently, the ACM boat returned to the AREVA tender as FRA-93 was completing its day of training. The Photographer came aboard the AREVA tender to join his "Le Parisien" colleague, and he showed the photos that he had taken on his camera viewfinder. There were four photos of ITA-94 that were viewed in this manner by Fabrice Levet on the AREVA tender.

13. The Photographer remained on the AREVA tender with the Journalist and came to the AREVA base. The Photographer's camera card was given Franck Socha, who had a capability to download photos from the card. Franck Socha downloaded the four photos taken of ITA-94 to his office computer. Franck Socha, who had not been on the water that day, says that the photos themselves did not appear to have been taken within 200 metres, and that he was unaware they were taken out of the Race Area

14. Franck Socha displayed the photos (which he says were virtually identical) on his screen. Fabrice Levet selected one of the photos. Franck Socha, reduced the size of the selected file (and thereby the definition) to a relatively low quality, less than 460KB in size, about half the file size of a typical consumer digital camera picture. He then sent the lower-quality photo by email to Fabrice Levet and deleted all four of the ITA-94 photos from his computer.

15. Fabrice Levet forwarded the photo to Bruno Dubois (AREVA's Sail Coordinator), to Andrew Lechte (an AREVA sail designer), to Thierry Peponnet (Afterguard) and to Benoit Briand (Crew). One copy of the photo was printed on a standard office color printer (A4) and viewed by several AREVA team members and then discarded. The photo was not otherwise printed.

16. On 31st January 2007, George Clyde, AREVA's Legal and Rules Advisor, noted the filing of Luna Rossa Application shortly after it was filed, and he advised several members of the team. At that time he was first told of the existence of copies of the ITA-94 photos at the AREVA Base. He informed Dawn Riley, AREVA's General Manager, and they ordered that all copies or electronic files of the photos be destroyed or deleted immediately. This included the destruction of the one print of the photo that had already been discarded in a waste bin.

17. Immediately thereafter, George Clyde telephoned Luis Saenz, General Counsel of Luna Rossa, and informed him of the fact that AREVA had received some of the photos that were the subject of the Luna Rossa Jury Application and was in the process of permanently deleting all copies. At Luis Saenz's request, an electronic copy of the photo which had not yet been deleted was located and emailed by George Clyde to Luis Saenz. A copy of the email to Luis Saenz transmitting the photo is attached as Exhibit B.

18. An internal investigation was initiated, which is the basis of the information provided herein.

19. Upon receipt of the Jury's Interim Orders and Directions on 1 February 2007, George Clyde advised the Jury Chairman, Luis Saenz and ACM of the situation and AREVA's intention to make a submission regarding these matters. A copy of that email is attached as Exhibit C.

20. Based on the Luna Rossa Application, AREVA has assumed that the photographs were taken outside of the Race Area and/or within 200 metres, although we have no independent verification of that.

21. The foregoing factual statement has been prepared by George Clyde on the basis of interviews with various participants and witnesses involved in the matter, and it is believed to be true, complete and correct in all respects. If there is any issue of fact that needs further elaboration or support or is in dispute, we are prepared to file further submissions and/or affidavits as requested by the Jury.

SUBMISSIONS OF AREVA CHALLENGE

22. AREVA agrees with Luna Rossa's position that, without the team's approval, ACM boats should not be used for ACM photographers, media photographers or any photographers or videographers to take photographs or videos of America's Cup yachts outside of the Racing Area or, except on racing days or official training days, inside the Racing Area within 200 metres.

23. AREVA further submits that, as a matter of policy, ACM should advise teams when it intends to allow a photographer to use ACM boats if the photographer has the particular intention of photographing or videoing that team's racing yacht, as was true in this case. B. AREVA's Submissions Regarding its Possession of the ITA-94 Photographs

24. AREVA concedes that there has been a violation of the Protocol by its team under Article 11.2, which provides in relevant part: 11.2 Prohibited activities The Competitors are prohibited from engaging in any of the following activities:

- (f) without the prior consent of the Competitor, observing or capturing images (photos, videos or by any other means) of another Competitor's ACC yacht from another vessel with the principal intent and purpose to gain design or performance information of an ACC yacht that is: outside the racing area designated in the Notice of Race (whether at the Venue or at another regatta for ACC yachts); or inside the designated racing area and within 200 meters of the Competitor's yacht.
- (g) the acceptance of any information from a third party that, under this Article, would have been improper for the Competitor to obtain directly.

25. Specifically, AREVA should not have viewed, obtained or accepted receipt from the Photographer of copies of the ITA-94 photos. It was a gross error in judgment on the part of the people involved, in direct violation of AREVA's well established policies. We deeply regret and are embarrassed by the incident, and we sincerely apologize to Luna Rossa.

26. AREVA individuals responsible for the matter have been disciplined, as their actions are directly contrary to AREVA's well established policies and are in violation of their contractual agreements.

27. Fortunately, this foolish transgression was discovered and remedied the day after it occurred, with appropriate action taken immediately. The violation occurred in unusual circumstances, where the Photographer used ACM's boats to get around the safeguards imposed by AREVA's normal precautions and procedures. Moreover, there was no consequence to the violation, as no useful design information from Luna Rossa was obtained or retained or used.

28. We also note the casual treatment of the photos once received. Immediately deleting three of the four photos, reducing the file-size and quality to a low level, printing the photo on a low-level office printer and discarding the print once made, all suggest that there may not have been the "principal intent and purpose" to gain design information, which is required for there to be a Protocol violation under Article 11.2(f). While we concede that the Protocol has been violated under all the facts and circumstances discussed above, at the very least this shows that the activity was not conducted seriously with a real intention to use the design information obtained.

29. We ask that the Jury consider an appropriate sanction without imposing a penalty that would have a competitive effect. No advantage has been gained by AREVA, and no disadvantage has been suffered by Luna Rossa or any other Competitor as a result of the Protocol violation. In this regard, the situation is similar to the Mascalzone Latino-Capitalia Protocol violation (ACJ014), where the team was censured and costs were assessed (although this transgression, while absolutely contrary to AREVA policies, was not inadvertent by the individuals involved).

30. Should the Jury believe it necessary or appropriate to impose a competitive penalty, we ask that it be imposed in the context of the current stage of the America's Cup, being the pre-regatta Acts. A penalty imposed on AREVA in Act 13 would be very significant (as AREVA is currently barely holding a 2-point Valencia Plan position in a tie with +39 Challenge), but still allow the team, though a strong showing on the race course, to overcome the effect of the penalty.

Respectfully submitted, George Clyde Legal and Rules Advisor AREVA Challenge

EXHIBIT A

From: Frederic AUGENDRE [mailto:faugendre@leparisien.presse.fr]

Sent: mercredi 10 janvier 2007 12:36

To: stephanie.nadin@k-challenge.org, AREVA Challenge, Equipe de France pour la 32e America's Cup, Media & Communications Manager

Subject: Venue à Valence

Chère Stéphanie,

Comme convenu, je te propose deux fenêtres pour le reportage dont nous avons parlé. Il s'agirait des 30-31 janvier, ou bien 6-7 février, à ta convenance. Nous préfèrerions, par ailleurs, réaliser ce reportage avec le photographe du Parisien, sachant que nos centres d'intérêt ne se focalisent pas uniquement sur le bateau, mais aussi sur l'organisation du team, la vie de groupe, ce qui se passe à terre, etc.

L'idée de suivre le team (ou ses différentes composantes) sur une journée pleine nous plaît bien. J'attends donc ton feu vert

Cordialement,

From: "Stephanie Nadin" <stephanie.nadin@k-challenge.org>

To: "Frederic AUGENDRE" <faugendre@leparisien.presse.fr>

Cc: "Celine.Trouve" <celine.trouve@areva-challenge.com>

Date: Thu, 11 Jan 2007 12:36:05 +0100

Subject: RE: Venue à Valence

Bonjour Frédéric,

Ce serait mieux les 30 et 31 janvier pour nous. Vous viendriez donc à 2 ?

Dear Stephanie,

As agreed, here are two propositions for the reportage we discussed : 30-31 January, or 6-7 February, whatever is the best for you. However, we would prefer to do this reportage with the photographer of "Le Parisien", as our centers of interest not only focus on the boat, but also on the team's organization, the group's life, what is going on on shore, etc.

The idea to follow the team (and its different parts) during one day is good for us. So I'm looking forward to your "green light".

Best regards

Hello Frederic,

For us it would be better on the 30 and 31st of January. So you would be 2 people, correct ?

Comme je te l'ai dit, nous pouvons vous fournir aussi nos photos libres de droits, surtout pour des choses qui n'auront pas pu se faire lors de votre venue etc.

Je te rappelle qu'en mer, ce sera uniquement des photos que nous vous fournirons, et bien entendu si tu as des besoins et idées précises, n'hésite pas à nous le dire, et nous ferons en fonction.

Dans la base : pour info, interdiction de pénétrer dans les ateliers et la voilerie pour photos, idem, nous vous fournirons des photos du shore team au travail, etc, car nous en avons beaucoup qui sont vraiment biens, ou nous pourrons en refaire d'autres selon vos besoins.

Confirme-moi que c'est donc OK pour vous.

Bien cordialement,

Stephanie

From: Frederic Augendre [mailto:faugendre@leparisien.presse.fr]

Sent: 11 January 2007 13:27

To: Stephanie Nadin Subject:

RE: Venue à Valence

Bonjour Stéphanie,

OK pour la période 30-31 janvier. Peut-on partir sur l'idée d'une journée pleine avec le team, ce qui me permettrait éventuellement de m'intéresser le lendemain à d'autres teams à Valence ?

Je réfléchis à la question photo et on en reparle dès que possible.

A+

Frédéric

As I told you, we can give you our pictures free of rights, and moreover for things that wouldn't be possible to do while you're here etc.

I remind you that regarding sailing, it will only be pictures that we will provide you with, and of course, if you have special ideas or needs for the the pictures, do not hesitate to let us know, we'll do some accordingly.

Inside the base : for your information, it is forbidden to go inside the boatshed and the sail loft for pictures. Same rule, we'll provide you with pictures of the shore team at work, etc, because we've lots that are really good, or we could do some more according to your needs.

Please confirm me it is OK for you.

Best regards

Stephanie

Hello Stephanie,

OK for the 30-31 January. Can we go with the idea of one full day with the team, which will eventually allow me to go and see other teams the day after in Valencia ?

I'm still thinking of the pictures question, and we'll talk about it asap.

See you,

Frederic

EXHIBIT B

From: George Clyde

Sent: Wednesday, January 31, 2007 7:58 PM

To: luis.saenz@lunarossachallenge.com

Subject: Media Photo

Dear Luis,

I have attached a photo that was received from a media photographer yesterday.

Per my instructions before I called you, all copies of this photo in possession of AREVA Challenge team members in any form of which I am aware have been or will shortly be destroyed.

I am told that three other photos of your yacht were shown by the photographer to members of our team, and I am trying to determine if any copies of these have been retained. If I find that they have, I will provide copies to you and destroy all copies in possession of AREVA Challenge team members.

I am conducting an internal investigation of this matter and will talk to you further when that is completed. I am hopeful that the investigation will show that no infraction of the Protocol by our team occurred, or that any infraction was unintentional.

But, to avoid any doubt or issues, I have proceeded as indicated. I appreciate your consideration, and you can count on my cooperation respecting this matter.

George Clyde

Legal and Rules Advisor AREVA Challenge, Equipe de France pour l'America's Cup

EXHIBIT C

From: George Clyde

Sent: Thursday, February 01, 2007 10:09 AM

To: Bryan Willis

Cc: luis.saenz@lunarossachallenge.com; nathalie.Vez-Habegger@americascup.com

Subject: CONFIDENTIAL -- Luna Rossa - ACM photos CONFIDENTIAL ---

Dear Bryan,

I write with regard to the recent Jury proceeding initiated by Luna Rossa, ACJ023.

Unfortunately, copies of four of the photos in question came into the possession of AREVA Challenge. I advised Luis of this as soon as I learned it yesterday.

At Luis' request, I have provided him with a copy of the one photo that had not already been deleted from the computer that received the photos.

We have destroyed all copies (and I am still in the process of confirming that this has been done), and I am conducting an internal investigation.

I presently expect that we will be making a full submission respecting the matter by the February 7 deadline specified in your Directions, if not before. My ability to complete the investigation and to prepare the submission at an earlier date is impacted by the fact I am currently in Valencia, but will be flying over the weekend to California.

I am providing you with this information not as a formal submission, but to let you know what to expect for your planning and scheduling purposes, to advise Nathalie of these circumstances, and to make myself available if there are any questions or comments that you, Luis or Nathalie might have in the meantime.

I would appreciate it if this information can be kept confidential to the maximum extent possible until our submission is made.

Best regards,

George Clyde

Legal and Rules Advisor AREVA Challenge, Equipe de France pour l'America's Cup