

I. Status of criminal proceedings (concluded July 2009)

On 20 June 2008, ATTAC Switzerland and several members, who had jointly written the book *attac contre l'empire NESTLE*, published in May 2004 by Mille et Une Nuits in Lausanne (German edition: *Nestlé – Anatomie eines Weltkonzerns*, Rotpunktverlag, Zürich, 2005) filed a criminal complaint with the Canton Vaud examining magistrate for violation of the provisions of the Swiss Criminal Code concerning protection of privacy (Sec. 179 et seq.) and for violation of the Data Privacy Act against all persons who had acted illegally on behalf of the corporations SECURITAS and NESTLÉ.

The charges were filed after the Télévision Suisse Romande news magazine “Temps Présent” broadcast a programme entitled “Securitas. Un privé qui vous surveille” [Securitas: A private company is watching you] on 12 June 2008. This programme revealed that an employee of the firm Securitas had infiltrated the group of authors of the above-mentioned book under the false identity “Sara Meylan”. She belonged to the Investigation Services department of the Securitas company, and was spying on behalf of the Nestlé group. According to “Temps Présent”, the Securitas spy’s task was to prepare detailed reports on the meetings of the group of authors. She attended meetings of the group, including in the homes of the authors. By means of access to a restricted e-mail list, she had access to all the authors’ research, their sources, and their contacts in Switzerland and abroad. Thus the Securitas spy had collected data without the knowledge of the authors of the book mentioned, by invasion of their privacy, with the aim of passing the data on to Nestlé.

On 7 September 2008, the TSR television programme *Mise Au Point* revealed that another Securitas employee had infiltrated other organizations from 2002 until at least 2005, under the false identity “Shanti Muller”. This spy also became the superior of “Sara Meylan”.

In the course of the investigation, Securitas and Nestlé played down their spying as much as possible, and never informed the judicial authorities of the extent, means, results, and duration of the infiltration on their own initiative.

On 26 September 2008, the plaintiffs laid an information with the examining magistrate against a third Securitas spy, who was still active in ATTAC under her true name in 2008. Nestlé and Securitas had claimed at first that the spying had ended with the departure of “Sara Meylan” in June 2004; when the deployment of this third agent was discovered, the companies then claimed that she had not written any more confidential reports on the activities of the plaintiffs after 2005.

Relying entirely on the statements of Securitas and Nestlé, the canton examining magistrate nonsuited the charge for the first time on **12 February 2009**. On appeal by the plaintiffs, this ruling was reversed by the Vaud Cantonal Court (court of appeals). In their appeal, ATTAC Switzerland and its members complained that the canton examining magistrate had never questioned the good faith of the companies, relying almost entirely on their collaboration to establish the facts of the matter. In the course of the appeal proceedings, the public prosecutor’s department also found that the investigation by the examining magistrate had been incomplete, and that several aspects ought to be examined more thoroughly, in particular to determine the duration and results of the spying.

After a brief extension of the investigation, the canton examining magistrate nonsuited the case again on **29 July 2009**, on the grounds that the case did not include anything on which a prosecution could be based; the only offence that might be relevant in his view being a violation of the data privacy act, which is statute-barred after three years.

In view of the difficulties encountered in establishing the facts, the plaintiffs decided not to appeal again against this second non-suit.

The book *Affaire classée* by the journalist Alec Feuz, published in 2009 by Editions d’En Bas in Lausanne, does a scrupulous and lucid analysis of the investigation by the canton examining magistrate.

II. Status of civil proceedings (pending)

In June 2008, ATTAC Switzerland and several members, who had jointly written the book *attac contre l'empire NESTLE*, published in May 2004 by Mille et Une Nuits in Lausanne (German edition: *Nestlé – Anatomie eines Weltkonzerns*, Rotpunktverlag, Zürich, 2005) filed suit against the firms Securitas and Nestlé in the Lausanne District Civil Court for violation of the provisions of the Swiss Civil Code protecting personal privacy against illicit infringement (Sec. 28 et seq.) and for violation of the Data Privacy Act.

This civil suit was also filed as a result of the Télévision Suisse Romande news magazine “Temps Présent” broadcasting a programme entitled “Securitas. Un privé qui vous surveille” [Securitas: A private company is watching you”] on 12 June 2008.

On **20 June 2008**, ATTAC Switzerland and its members spied upon by Securitas on instructions from Nestlé first **applied for a temporary court order** to secure evidence and seize all documents, recordings, and photographs in electronic, manuscript, or sound form resulting from the spying. In order to have their request accepted, ATTAC Switzerland and its members spied upon needed to make a prima facie case that there was an imminent or current violation of their personal privacy rights. ATTAC Switzerland and its members spied upon also needed to make a prima facie case that the behaviour of Nestlé and Securitas on 20 June 2008 gave serious reason to fear a future violation of their personal privacy rights.

However, this **application for a temporary court order** was rejected on 8 August 2008. On 9 April 2009, the presiding judge of the Lausanne District Civil Court informed the parties of the grounds for his decision. In substance, the civil-court judge was of the opinion that ATTAC Switzerland and its members spied upon had not made a prima facie case that there was an imminent, current, or future threat of violation of their personal privacy rights. However, the judge also was of the opinion that “doubts are justified as to whether the production (of documents obtained from the collection of facts) by Nestlé S.A. has been complete.” On the basis of the confidential reports produced by Nestlé, the judge termed the spying on ATTAC “unlawful”. In the grounds for his ruling, the judge already noted that there had indeed been “a violation of the privacy rights of the plaintiff members of ATTAC Switzerland and of the association itself”.

On **30 June 2008**, ATTAC Switzerland and its members spied upon **filed suit on the issues** before the same civil judge, seeking the following remedies:

- I. *That it be ordered that Nestlé and Securitas present the complete results of the surveillance and information gathering to which the authors of the book *attac contre l'empire NESTLE* and the association ATTAC Switzerland were subjected by violation of their privacy, including the information on the origin of the information and data collected.*
- II. *That it be ordered that Nestlé and Securitas communicate the purpose of the surveillance and information-gathering concerned.*
- III. *That it be found that this surveillance and information-gathering by Nestlé and Securitas is unlawful.*
- IV. *That it be found that this surveillance and information-gathering by Nestlé and Securitas is an unlawful violation of privacy.*
- V. *That it be ordered that Nestlé and Securitas hand over all results of the surveillance and information-gathering.*
- VI. *That the judgment be published in the press at the expense of Nestlé and Securitas.*
- VII. *That Nestlé and Securitas be sentenced to pay 27,000 Swiss francs to the authors of the book mentioned and to the association ATTAC Switzerland as moral amends.*

These proceedings have been delayed by various incidents, and are still pending. The preliminary hearing was held on 3 June 2009.

The trial will take place on 24 and 25 January 2012, before the Lausanne District Civil Court. Numerous witnesses will be heard, in particular those Securitas employees who gathered the information and wrote confidential reports about ATTAC Switzerland and its members spied upon, and the Nestlé employees for whom the reports were intended.

Source: Attac Switzerland