

ADMINISTRATIVE PANEL DECISION

Chronopassion SAS v. David Czinczenheim
Case No. D2023-1475

1. The Parties

The Complainant is Chronopassion SAS, France, represented by LAIDEBEUR & PARTNERS, Luxembourg.

The Respondent is David Czinczenheim, France.

2. The Domain Name and Registrar

The disputed domain name <chrono-passion.com> (the “Disputed Domain Name”) is registered with SNAPNAMES 38, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2023. On April 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 7, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 11, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 13, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 12, 2023.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on May 30, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and

Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a French company, specialized in the field of horology and watches, founded in 1988, which is present on the Internet through the domain names <chronopassion.com> and <chronopassion.fr>.

The Complainant is the owner of several trademarks, namely (hereinafter “the CHRONOPASSION Trademarks”):

- the French trademark CHRONOPASSION No. 1450779 registered on February 19, 1988, for products and services in classes 14, 16, 18 and 37;
- the French trademark CHRONOPASSION No. 3818868 registered on March 29, 2011, for products and services in classes 35, 36 and 39;
- the European Union trademark CHRONOPASSION No. 010243459 registered on February 7, 2012, for products and services in classes 35, 36 and 39;
- the United Kingdom trademark CHRONOPASSION No. UK00910243459 registered on February 7, 2012, for products and services in classes 35, 36 and 39;
- the Hong Kong, China, trademark CHRONOPASSION No. 302034477 registered on September 19, 2011, for products and services in classes 35, 36 and 39; and
- the International trademark CHRONOPASSION No. 1096210, designating Switzerland, Singapore, China and the USA, registered on September 15, 2011, for products and services in classes 35, 36 and 39.

The Disputed Domain Name was registered on March 30, 2023, and reverts to a page offering the Disputed Domain Name for sale or for rent at prices higher than the average price of registering a domain name.

5. Parties' Contentions

A. Complainant

First, the Complainant stands that the Disputed Domain Name is almost identical to its earlier CHRONOPASSION Trademarks, except for the hyphen separating the two words “chrono” and “passion”, which are constitutive of the CHRONOPASSION Trademarks.

Secondly, the Complainant considers that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, since the Complainant has exclusive trademark rights in the term CHRONOPASSION and has never licensed or authorized the Respondent to use its mark to register a domain name. The Complainant adds that the Respondent is not known under the Disputed Domain Name.

Lastly, the Complainant considers that the Disputed Domain Name was registered and is being used in bad faith. The Complainant demonstrates that the CHRONOPASSION Trademarks were registered and used well before the Disputed Domain Name was registered. The Complainant asserts that the registration of the Disputed Domain Name reproducing the Complainant's trademarks without authorization demonstrates the Respondent's deliberate intention to create a likelihood of confusion with the Complainant's legitimate business. The Complainant adds that the Respondent is not using the Disputed Domain Name in good faith since it put it up for sale at a price of EUR 3,500 or for rent for EUR 292 per month only a few days after its purchase. The Complainant points out that the Respondent has registered 630 domain names, a large

portion of which are being unused or up for sale. The Respondent therefore appears to follow a pattern of reserving domain names without the intention of exploiting them, which is contrary to good practice.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the Disputed Domain Name, the Complainant shall prove the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the CHRONOPASSION Trademarks.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Disputed Domain Name.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. In cases where a domain name consists of a common, obvious, or intentional misspelling of a trademark, the domain name will be considered by UDRP panels to be confusingly similar to the relevant mark for purposes of the UDRP (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Regarding the Disputed Domain Name <chrono-passion.com>, the Panel finds that it is composed of;

- the CHRONOPASSION Trademark in its entirety;
- a hyphen separating the two words "chrono" and "passion", which are constitutive of the CHRONOPASSION Trademarks; and
- the generic Top-Level Domain ("gTLD") ".com", it being specified that the gTLD in a domain name is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

According to prior UDRP panel decisions, it is sufficient that the domain name incorporates the entirety of a trademark, in order to consider the domain name as confusingly similar to that mark for purposes of UDRP standing (see section 1.7 of the [WIPO Overview 3.0](#)).

The Panel considers that, in this case, the mere insertion of a hyphen between the two words composing the CHRONOPASSION Trademarks does not prevent a finding of confusing similarity.

Therefore, the Panel holds that the Disputed Domain Name <chrono-passion.com> is confusingly similar to the CHRONOPASSION Trademarks and that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant shall demonstrate that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Policy, paragraph 4(c), outlines circumstances that if found by the Panel to be proved shall demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Name.

These circumstances are:

- before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

According to prior UDRP panel decisions, it is sufficient that a complainant shows *prima facie* that a respondent lacks rights or legitimate interests in a domain name in order to shift the burden of production to the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Indeed, while the overall burden of proof in a UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out *prima facie* that a respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

Indeed, it appears that the Complainant has not given any license or authorization of any kind to the Respondent to use the CHRONOPASSION Trademarks. Moreover, the Panel finds that there is no evidence that the Respondent is commonly known by the Disputed Domain Name or that the Respondent has the intent to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, at the time of the Complaint, the Disputed Domain Name reverted to a page on which the Disputed Domain Name was offered for sale or for rent.

In any case, the Respondent did not reply to the Complainant's contentions, and consequently, did not rebut the Complainant's *prima facie* case.

Therefore, according to the Policy, paragraphs 4(a)(ii) and 4(c), the Panel considers that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name.

C. Registered and Used in Bad Faith

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the Disputed Domain Name has been registered and is being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

First, the Panel considers that it is established that the Complainant's CHRONOPASSION Trademarks, as well as the domain names <chronopassion.com> and <chronopassion.fr> were registered and used before the registration of the Disputed Domain Name. Therefore, there is a presumption of bad faith registration of the Disputed Domain Name given that it wholly reproduces the CHRONOPASSION Trademarks.

Then the Panel points out that the Complainant demonstrates that:

- the Disputed Domain Name has been offered for sale or for rent immediately after its registration; and
- the Respondent has registered numerous domain names, lots of which are being unused or offered for sale, demonstrating that the Respondent has engaged in a pattern of trademark-abusive domain name registration.

Since the aim of the Respondent was to sell the Disputed Domain Name for a price likely exceeding out-of-pocket costs, the Panel considers that the registration and use of the Disputed Domain Name is deemed to be in bad faith (paragraph 4(b)(i) of the Policy).

In view of the above and the Respondent's failure to provide any response to the Complainant's contentions, the Panel finds it is not possible to conceive any plausible actual or contemplated good faith registration and use of the Disputed Domain Name by the Respondent.

Therefore, in view of all the circumstances of this case, the Panel holds that the Respondent has registered and is using the Disputed Domain Name in bad faith according to the Policy, paragraphs 4(a)(iii) and 4(b).

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name, <chrono-passion.com> be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: June 13, 2023