

ADMINISTRATIVE PANEL DECISION

Centre National D'art et de Culture Georges Pompidou v. Whois Privacy Protection Service by onamae.com / xiansheng chen, chenxiansheng
Case No. D2022-1207

1. The Parties

The Complainant is Centre National D'art et de Culture Georges Pompidou, France, represented by Nameshield, France.

The Respondent is Whois Privacy Protection Service by onamae.com, Japan / xiansheng chen, chenxiansheng, Singapore.

2. The Domain Name and Registrar

The disputed domain name <centrepompidouseoul.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on April 6, 2022. On April 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 8, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 12, 2022, 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 in English on April 12, 2022.

On April 12, 2022, the Center sent an email in English and Japanese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on April 12, 2022. The Respondent did not comment on the language of the proceeding.

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 in English and Japanese of the Complaint, and the proceedings commenced on April 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 13, 2022.

The Center appointed Douglas Clark as the sole panelist in this matter on May 17, 2022. 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, the Centre National d'Art et de Culture (CNAC), commonly known as Centre Georges Pompidou, and shortened to Centre Pompidou (also known as the Pompidou Centre in English) is a complex building in the Beaubourg area of Paris. It was established in 1977. It houses the National Museum of Modern and Contemporary Art, the Public Information Library, a vast public library, a centre for industrial creation, and a centre for musical research and creation.

As a national museum, the Centre Pompidou is government-owned and subsidized by the French Ministry of Culture. In 2019, the Centre Pompidou has had more than 3 million visitors and its official website ("www.centrepompidou.fr") received nearly 5.7 million visits in 2019.

The Complainant owns several trademarks for CENTRE POMPIDOU, such as:

- International trademark registration CENTRE POMPIDOU No. 1633907 registered since June 4, 2021, designating the United States of America.
- European Union Trade Mark registration CENTRE POMPIDOU No. 013087374 registered since December 9, 2014.

The disputed domain name <centrepompidouseoul.com> was registered on February 25, 2022. It resolves to a website displaying links to online gaming and pornographic content.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name <centrepompidouseoul.com> is made entirely up of the registered trademark CENTRE POMPIDOU and the city name "Seoul" to which the generic Top-Level Domain ("gTLD") ".com" has been added. It is therefore confusingly similar to the Complainant's registered trademark CENTRE POMPIDOU.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant is not related in any way to the Respondent or to the gambling related content of the website. The fact the website under the disputed domain name displays links to online gaming and pornographic content is not a legitimate interest in respect of the disputed domain name.

The Complainant submits that the Respondent must have known of the Complainant's CENTRE POMPIDOU trademark (which was registered a long time prior to the registration of the disputed domain name) when registering the disputed domain name. The use the Respondent has made on its website advertising gambling or adult services shows the Respondent's bad faith and tarnishes the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of Proceedings

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In this case, the language of the Registration Agreement for the disputed domain name is in Japanese. Based on the given evidence, there is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under, *inter alia*, the following grounds:

- a) the disputed domain name is formed by ASCII characters and not Japanese characters; and
- b) in order to proceed in Japanese the Complainant would have had to retain specialised translation services that would cause an unnecessary burden to the Complainant and delay the proceeding;
- c) the Center has informed the Respondent of the proceedings in both English and Japanese.

The Respondent did not respond to the language request.

In accordance with paragraph 11(a) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the above matters and the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Japanese.
- the Respondent has not commented on the language of the proceeding.
- an order for the translation of the Complaint and other supporting documents will result in significant expenses for the Complainant and a delay in the proceeding.

Further, the Panel notes that according to the Whois data provided the Respondent is located in Singapore where English is the main official language.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

6.2 Substantive Issues

A. Identical or Confusingly Similar

The disputed domain name <centrepompidououl.com> is made up of the registered trademark CENTRE POMPIDOU, the geographical term "Seoul", and the gTLD ".com". The geographical term does not prevent a finding of confusing similarity and the gTLD is normally not taken into account. The disputed domain name is confusingly similar to the registered trademark CENTRE POMPIDOU.

The Panel notes that the Complainant does not rely on any registered trade marks for CENTRE POMPIDOU in Japan, where the disputed domain name was registered or Singapore where the Respondent is located. The ownership of a trade mark is generally considered to be a threshold standing issue. The location of the trade mark, its date of registration (or first use), and the goods and/or services for which it is registered, are

all irrelevant for the purpose of finding rights in a trade mark under the first element of the UDRP. These factors may however bear on a panel's further substantive determination under the second and third elements. (See section 1.1.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The first part of paragraph 4(a) of the Policy is therefore satisfied.

B. Rights or Legitimate Interests

The Respondent has not responded to the Complaint to assert any rights or legitimate interests. Paragraph 2.1 of the [WIPO Overview 3.0](#) provides:

"While the overall burden of proof in UDRP proceedings is on the complainant, 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 a *prima facie* case that the 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."

The Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. None of the circumstances in paragraph 4(c) of the Policy, which sets out how a respondent can prove its rights or legitimate interests, are present in this case. The use of the disputed domain name that incorporates the Complainant's mark in its entirety to provide information and links about and redirecting to gambling and prostitution cannot be considered to be a noncommercial nor *bona fide* offering of goods or services.

The second part of paragraph 4(a) of the Policy is therefore satisfied.

C. Registered and Used in Bad Faith

For the same reasons as those above, the Panel has no hesitation in finding that the disputed domain name was registered in bad faith and is being used in bad faith. The use promoting gambling, prostitution, and displaying pornography clearly tarnishes the CENTRE POMPIDOU trademark, which has been found to be registration and use in bad faith. (See [WIPO Overview 3.0](#), paragraph 3.12).

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 <centrepompidououl.com> be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: May 31, 2022