

ADMINISTRATIVE PANEL DECISION

Groupe La Française v. Mark James
Case No. D2022-3393

1. The Parties

The Complainant is Groupe La Française, France, represented by Lambert & Associates, France.

The Respondent is Mark James, Canada.

2. The Domain Name and Registrar

The disputed domain name <la-franscaise.com> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 12, 2022. On September 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 12, 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 (Registration Private, Domains By Proxy, LLC). The Center sent an email communication to the Complainant on September 13, 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 on September 19, 2022.

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 September 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 12, 2022.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on October 20, 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

It results from the Complainant's undisputed allegations that the Complainant is a French company established almost 50 years ago and a leading French player in the field of asset management, structured around several business lines: real estate, securities, direct financing, and investment solutions.

Furthermore, it results from the undisputed evidence provided by the Complainant that the Complainant is the registered owner of many trademarks consisting of the verbal elements LA FRANÇAISE, such as:

- National French Trademark registration for LA FRANÇAISE n°4160677, filed on February 27, 2015, for services in in classes 16, 35, 36, and 38;
- European Union Trademark registration for LA FRANÇAISE n°013780093, filed on February 27, 2015, for services in classes 16, 35, 36, and 38.

According to the Whois extract provided by the Complainant, the disputed domain name was created on August 14, 2022.

The disputed domain name resolves to a parking website displaying Pay-Per-Click ("PPC") links for online language courses, translation services, and kitchen sales.

5. Parties' Contentions

A. Complainant

Firstly, the Complainant asserts that the disputed domain name constitutes a reproduction of the Complainant's trademarks. The only difference between the sign is the addition of an "s" to "la francaise" which is an obvious and intentional misspelling. According to the Complainant, the signs in question must be considered as being visually almost identical. Phonetically, the two signs are both composed of the phonetically identical terms LA FRAN(S)CAISE. As a result, likelihood of confusion is more than likely with regard to the little difference between the disputed domain name and the Complainant's prior rights.

Secondly, the Complainant contends that it has never granted authorization to the Respondent for registering and using its trademarks as a domain name or within emails. There is no and has never been commercial or contractual relationship between the Complainant and the Respondent. Moreover, the Complainant mentions that the disputed domain name might have been used for fraudulent purposes, such as phishing, purposes, which cannot be considered *bona fide* use.

Thirdly, the Complainant finds it more than likely that the reservation of the disputed domain name has been made in the sole purpose of perpetuating phishing attack and obtain the transfer of important sum of money as it occurred with other domain names involving the Complainant's trademarks such as <lafrancaisemanagement.com> or <lafrancaise-management.fr>. According to the Complainant, this context and the high risk that the fraud is continuing again need to be taken into account in the present UDRP action. In a context of fraud against the Complainant, the registration of the disputed domain name in bad faith is undeniable.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will, therefore, proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided that the Complainant is the registered owner of various trademarks for LA FRANÇAISE. The Complainant's trademark registrations well predate the creation date of the disputed domain name.

The Panel notes that disputed domain name includes the trademarks LA FRANÇAISE in its entirety and merely adds the letter “s” within the sign while the conversion of the “Ç” into a “C” is technically mandatory. The Panel considers the addition of this “s” as an obvious misspelling. This single-letter difference does not avoid confusing similarity between the disputed domain name and the Complainant's trademark LA FRANÇAISE. It is acknowledged amongst UDRP panels that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered to be confusingly similar to the relevant mark for purposes of the first element (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#))). In the present case, this Panel has no doubts that in a side-by-side comparison of the disputed domain name and the relevant trademark LA FRANÇAISE, the latter mark is clearly recognizable.

In light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

First, no evidence or information has been provided that could lead the Panel to conclude that the Respondent is commonly known by the disputed domain name pursuant to paragraph 4(c)(ii) of the Policy. In addition, the Respondent has no connection or affiliation with the Complainant who has not granted the Respondent any license or consent, express or implied, to use the Complainant's trademark in domain names or in any other manner.

Second, it results from the evidence provided by the Complainant that the disputed domain name is currently connected to a website displaying PPC links to commercial offers. Such use can neither be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue in the sense of paragraph 4(c)(i) and (iii) of the Policy. In fact, this Panel shares the view of previous UDRP panels holding that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see section 2.9 of the [WIPO Overview 3.0](#)). While the links do not seem to be such PPC links as to compete with or capitalize upon the Complainant's reputation, the links in the present case lead to commercial offers which are, in the Panel's view and in the absence of any evidence to the contrary, comparable to PPC links.

However, the Complainants further allegations that the disputed domain name might have been used for fraudulent purposes, such as phishing purposes, which cannot be considered *bona fide* use, have not been substantiated in any manner. These further allegations are therefore set aside.

It is acknowledged that once the Panel finds such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent failed to come forward with any allegations or evidence in this regard, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

One of those circumstances are those specified in paragraph 4(b)(iv), *i.e.*, where the domain name is used to intentionally attempt to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.

In the Panel's view, the Respondent has intentionally registered the disputed domain name, which contains the phonetic identity of the Complainant's trademark LA FRANÇAISE, merely adding the letter "s". By the time the disputed domain name was registered, it is unlikely that the Respondent did not have knowledge of the Complainant's trademark. The Complainant also proved that the Respondent is using the disputed domain name to lead to a page with commercial links. These facts confirm that the disputed domain name is used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

The Panel further notes the Complainants allegations that the disputed domain name is likely to have been registered in the sole purpose of perpetuating phishing attack and obtain the transfer of important sum of money as it occurred with other domain names involving the Complainant's trademarks such as <lafrancaisemanagement.com> or <lafrancaise-management.fr>. However, the Panel further notes that no evidence or concrete information has been provided in support of these allegations, which are therefore set aside.

Finally, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith: (1) the nature of the disputed domain name being a typo of a registered trademark; (2) the Respondent originally used a privacy service to hide its identity; (3) a clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the disputed domain name; (4) the Respondent not providing any formal response with conceivable explanation of its behavior so that no legitimate use of the disputed domain name by the Respondent is actually conceivable for the Panel.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

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 <la-franscaise.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: November 8, 2022