

ADMINISTRATIVE PANEL DECISION

Television Francaise 1 v. Hokdk, heheujkkj

Case No. D2022-4439

1. The Parties

The Complainant is Television Francaise 1, France, represented by AARPI Scan Avocats, France.

The Respondent is Hokdk, heheujkkj, Thailand.

2. The Domain Name and Registrar

The disputed domain name <foux.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 21, 2022. On November 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 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 November 22, 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 December 22, 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 November 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 20, 2022.

The Center appointed Taras Kyslyy as the sole panelist in this matter on December 29, 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 is a European company in the field of production and broadcasting TV programs. The Complainant was founded in 1974 and operates the first and oldest television channel in France. Among its many activities, the Complainant is also known for its television programs for children, notably through the TV show TFOU which is particularly known in France. In 2015, the Complainant launched a VOD service for children called TFOU MAX, accessible online at “www.tfoumax.fr”, and also from a mobile application. The Complainant is also active on social networks via its TFOU trademark, with over 280,000 followers on its YouTube channel, 160,000 followers on its Facebook page and 80,000 followers on Instagram. The Complainant has also diversified its activities in recent years under the TFOU trademark by developing leisure parks for children called “TFOU PARC”.

The Complainant is the registered owner of a number of TFOU design trademarks, for instance French registration No. 3555553, registered on February 13, 2008.

The Complainant also owns <tfou.com> and <tfou.fr> domain names that it uses for its activities.

The disputed domain name was registered on November 6, 2022, and resolved to a website with adult sexually explicit content. At the time of the present decision the disputed domain name does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant's trademark. The generic Top-Level Domain (“gTLD”) “.com” in the disputed domain name is not of distinguishing effect and must be removed from analysis. The disputed domain name incorporates the Complainant's trademark with the mere addition of the final letter “x”, which does not eliminate the confusing similarity between the Complainant's trademark and the disputed domain name. The addition of this letter combined with the use of the disputed domain name to refer to a pornographic website therefore aggravates the infringement of the Complainant's rights and its reputation, particularly since the Complainant's trademark is aimed at children.

The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has never given any authorization or permission to the Respondent to register or to use its trademark. The Respondent is not in any way related to the Complainant's business, is not one its distributors and does not carry out any activity for or has any business with it. The use of the disputed domain name reproducing the Complainant's trademark to redirect to a pornographic content is not a *bona fide* use.

The disputed domain name was registered and is being used in bad faith. The Complainant's prior trademarks were registered and used in France and abroad many years before the disputed domain name was registered. The disputed domain name is almost identical to the Complainant's trademark. The Respondent could not ignore the Complainant's prior trademark rights in view of its reputation and the distinctive character of its trademark. The mere absence of any right or legitimate interest of the Respondent in the disputed domain name demonstrates that it has not been registered or used in good faith. The use of the disputed domain name to redirect to a pornographic website confirms the Respondent's bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test.

According to section 1.10 of the [WIPO Overview 3.0](#) panel assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element. Thus, the Panel disregards the design element of the Complainant's trademark for the purposes of the confusing similarity check.

According to section 1.7 of the [WIPO Overview 3.0](#) in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainant's trademark.

According to section 1.8 of the [WIPO Overview 3.0](#) where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The Panel finds this applies to the present case, where the addition of letter "x" to the disputed domain name does not prevent finding it confusingly similar to the Complainant's trademark.

Considering the above the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established a *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The available evidence does not suggest that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Respondent has no right or legitimate interests in the disputed domain name currently resolving to an inactive website (see, e.g., *Philip Morris USA Inc. v. Daniele Tornatore*, WIPO Case No. [D2016-1302](#)).

The initial use of the disputed domain names to redirect to the website with adult sexually explicit content is not a *bona fide* offering of goods or services (see, e.g., *International Business Machines Corporation v. chenaibin*, WIPO Case No. [D2021-0339](#)).

Considering the above the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy

C. Registered and Used in Bad Faith

The Complainant has shown to the satisfaction of the Panel that its TFOU trademark has been used for many years and that it is well known. In the view of the Panel, considering in particular the Complainant's pre-existing domain name <tfou.com>, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant and its well-known trademark, which in the circumstances of this case is bad faith (see, e.g., *Télévision Française 1 v. Valtteri Serimaa*, WIPO Case No. [D2022-0688](#)).

The fact that the website at the disputed domain name provided adult sexually explicit content is a clear indication that the domain name has been registered and used in bad faith (see, e.g., *Six Continents Hotels, Inc. v. Seweryn Nowak*, WIPO Case No. [D2003-0022](#), *Miroglio S.p.A. v. Mr. Alexander Albert W. Gore*, WIPO Case No. [D2003-0557](#)).

Although at the time of this decision the disputed domain name resolves to inactive webpage, its previous bad faith use and lack of explanation of possible good faith use from the Respondent makes any good faith use of the disputed domain name implausible. Thus, the current passive holding of the disputed domain name does not prevent a finding of bad faith (see, e.g., *Abbott Diabetes Care Inc. v. Privacy Protection, Hosting Ukraine LLC / Вумануї Броцман (Vitalii Brocman)*, WIPO Case No. [DPW2017-0003](#)).

Considering the above the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under 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, <tfoux.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: January 12, 2023