

ADMINISTRATIVE PANEL DECISION

France Télévisions v. Antoine Elluine

Case No. D2022-3980

1. The Parties

The Complainant is France Télévisions, France, represented by Dreyfus & Associés, France.

The Respondent is Antoine Elluine, Morocco.

2. The Domain Name and Registrar

The disputed domain name <francetv.store> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 24, 2022 regarding the disputed domain name and other domain names (<francetv.live> and <francetv.digital>). On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the domain names. Also on October 24, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the domain names which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 26, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

Upon request from the Complainant, the proceedings were suspended on October 31, 2022, for purposes of settlement discussions. On December 30, 2022, the Complainant requested the proceedings to be reinstated, and also filed an amended Complaint which only related to the disputed domain name. The proceedings were reinstituted by the Center on January 3, 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 January 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 27, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on February 1, 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 public national television broadcaster that owns several television channels. On May 9, 2017 all the content produced by the Complainant and its subsidiaries became available as "France TV" on Internet service providers.

The Complainant is the owner, amongst others, of the International trademark No. 1109946, for FRANCE TV, registered on November 2, 2011, successively renewed, covering goods and services in classes 9, 16, 28, 35, 38, 41 and 42, and designating Algeria, Morocco and Monaco.

The disputed domain name <francetv.store> was registered on June 9, 2022 and has been used in connection with a webpage claiming to provide services under "Meilleur Abonnement IPTV No. 1 En France" (the "Best IPTV Subscription N° 1 In France"). Presently, no active webpage resolves from the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant asserts to be a state-owned company that has as subsidiaries France 2 (formerly Antenne 2) and France 3 (formerly France Régions 3), later joined by the legally independent channels France 4 (formerly Festival), and France Five (formerly La Cinquième). The Complainant further asserts to own several television channels for a national, overseas and international audience, also counting with overseas radio and several websites, distributing 8,000 hours of programs in France and around the world.

According to the Complainant, the disputed domain name resolved to a webpage offering competing IPTV (Internet Protocol television) subscription in France in addition to having email servers configured, what enhances the risk that the Respondent might be engaged in a phishing scheme.

Also according to the Complainant, the disputed domain name reproduces the Complainant's trademark FRANCE TV in its entirety, being it likely that the disputed domain name could mislead Internet users into thinking that it is, in some way, associated with the Complainant.

Furthermore, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name given that:

a) the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating the FRANCE TV trademark;

b) the Respondent is not commonly known by the disputed domain name or the name "france tv", in accordance with paragraph 4(c)(ii) of the Policy;

c) the Respondent cannot assert that, before any notice of this dispute, it was using, or had made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services, in accordance with paragraph 4(c)(i) of the Policy; and

d) email servers have been configured on the disputed domain name and thus, there might be a risk that the Respondent is engaged in a phishing scheme.

As to the registration of the disputed domain name in bad faith the Complainant asserts that it is implausible that the Respondent would be unaware of the Complainant at the time of registration of the disputed domain name given both the fame of its FRANCE TV trademark as well as to the choice of the top level domain "store" which corresponds to the Complainant's field of activity.

Moreover, given that email servers were configured on the disputed domain name, the Respondent is probably engaged in a phishing scheme, having past UDRP panels concluded that the use of a disputed domain name for the purpose of defrauding Internet users by the operation of a "phishing" website is perhaps the clearest evidence of registration and use of a domain name in bad faith. Also, the Respondent registered the disputed domain name through a privacy shield service to hide its identity and contact details, thus, preventing the Complainant from contacting it, having prior panels confirmed that a deliberate concealment of identity and contact information may in itself indicate registration in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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 Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

A. Identical or Confusingly Similar

The Complainant has established rights in the FRANCE TV trademark, duly registered.

The Panel finds that the disputed domain name reproduces the Complainant's trademark in its entirety. As recognized by past UDRP panels involves a "comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7).

The Complainant's trademark is identical to the disputed domain name.

The first element of the Policy has therefore been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that indicate a respondent's rights to or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the respondent is making 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 or service mark at issue.

The Complainant contends that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register its trademark, or to register any domain name incorporating said trademark. The Panel finds that the Complainant has made out its *prima facie* case, and the burden of production has shifted to the Respondent to show their rights and legitimate interests in the disputed domain name. The Respondent failed to reply to the Complainant's contentions.

The absence of any indication that the Respondent has rights in a term corresponding to the disputed domain name, or any possible link between the Respondent and the Complainant that could be inferred from the details known of the Respondent or the webpage relating to the disputed domain name, corroborate with the Panel's finding of the absence of rights or legitimate interests.

Furthermore, the past use made of the disputed domain name in connection with a webpage offering competing IPTV subscription services and the present inactive use of the disputed domain name further corroborate a finding of the Respondent's lack of rights or legitimate interests.

Furthermore, the domain name being identical to the Complainant's trademark carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b) that bad faith registration and use can be found in view of:

- (i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant who is the owner of a trademark relating to the disputed domain name or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the Respondent has registered the disputed 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other location, by creating a likelihood of confusion with the Complainants' 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.

The record shows that the disputed domain name has been used in connection with a webpage claiming to provide services under "Meilleur Abonnement IPTV No. 1 En France" (the "Best IPTV Subscription N° 1 In France"). The nature of the website associated with the disputed domain name was clearly commercial, as certain services were offered under different prices, ranging from EUR 29,99 to EUR 49,99 per month.

These facts confirm that the disputed domain name has been used in bad faith, in particular to attract, for commercial gain, Internet users to the Respondent's website or other location, by creating a likelihood of confusion with the Complainants' mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

As for the current passive holding, past UDRP panels have already dealt with the question of whether the "passive holding" of a domain name could constitute bad faith. Section 3.3 of the already quoted [WIPO Overview 3.0](#) states that "[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put".

In the present case, the passive holding of the disputed domain name by the Respondent amounts to the Respondent acting in bad faith, given that the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name. In addition to that, in the circumstances of this case, it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate.

The registration and use of the disputed domain name in bad faith are further corroborated in the present case in view of the following circumstances:

- (i) the well-known nature of the Complainant's trademark and the identity between the disputed domain name and said trademark indicate that the Respondent is most likely to have the Complainant and its trademark in mind when registering the disputed domain name;
- (ii) the disputed domain name has been resolving to an inactive webpage, and the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name;
- (iii) the lack of reply by the Respondent, without giving any explanation on its choice of the confusingly similar disputed domain name or a formal response to the Complaint on the merits;
- (iv) the Respondent's choice to retain a privacy protection service to conceal its true identity;
- (v) the indication of what it appears false contact information not having the Center fully delivered communication to the Respondent; and
- (vi) the Respondent's potential use of the disputed domain name in connection with fraudulent email addresses.

For the reasons stated above, the Respondent's conduct amounts, in this Panel's view, to bad faith registration and use of the disputed domain name.

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 <francetv.store> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: February 15, 2023