

ADMINISTRATIVE PANEL DECISION

Francap Distribution v. Djotodia Marie
Case No. D2023-2499

1. The Parties

Complainant is Francap Distribution, France, represented by Cabinet Germain & Maureau, France.

Respondent is Djotodia Marie, France.

2. The Domain Name and Registrar

The disputed domain name <distribution-francap.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2023. On June 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 2023, the Registrar transmitted by email to the Center its verification response disclosing the registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on June 12, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on June 14, 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 Respondent of the Complaint, and the proceedings commenced on June 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 9, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 11, 2023.

The Center appointed Nathalie Dreyfus as the sole panelist in this matter on July 18, 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

Complainant is the French Company Francap Distribution, founded in 1963, which specialized in developing ranges of own-brand products, pooling purchases, and negotiating commercial conditions, on behalf of affiliated companies, which buy and sell to convenience and general food stores.

Complainant demonstrates its ownership over many trademarks consisting of or including the words "Francap Distribution" in France, among which:

- European Trademark FRANCAP DISTRIBUTION No. 002498020 filed on December 11, 2001 and registered on September 29, 2003, for goods and services in classes 35, 36, 39, 41, and 42; renewed.
- French Trademark FRANCAP DISTRIBUTION No. 99825745 filed on November 23, 1999, and registered on May 5, 2000, for goods and services in classes 35, 36, 39, 41, and 43; renewed.

As part of its business activities, Complainant owns the domain name <francap.com> registered on March 10, 1998.

The Disputed Domain Name <distribution-francap.com> was registered on May 30, 2023, with the registrar NameCheap Inc and resolves to a pay-per-click ("PPC") page where the Disputed Domain Name is displayed at the top of the page.

5. Parties' Contentions

A. Complainant

First and foremost, Complainant alleges that the Disputed Domain Name is confusingly similar to the FRANCAP DISTRIBUTION trademark as it includes Complainant's trademark in its entirety. Complainant argues that the change in the order of words does not neutralize the confusing similarity of the Disputed Domain Name to Complainant's trademark.

Complainant affirms that Respondent has no rights or legitimate interest in the Disputed Domain Name. Respondent is neither licensed nor authorized to use Complainant's trademark. Furthermore, Complainant considers that, in using the Disputed Domain Name to host a parked page comprising PPC links redirecting to competitor sites in relation to similar activities, Respondent is not making a *bona fide* offering of goods and services.

Finally, Complainant asserts that Respondent registered and uses the disputed domain name in bad faith. Indeed, Complainant considers that the Disputed Domain Name is confusingly similar to Complainant's trademark and Respondent is intentionally misleading potential customers of Complainant by making them believe that the Disputed Domain Name would lead to Complainant's business.

Furthermore, Complainant argues that the Disputed Domain Name is used as a parked domain by Respondent, generating income from Internet users clicking on the links promoting mainly services of food distribution and delivery, which are identical or at least highly similar to the services protected by Complainant's trademark.

Complainant concludes by referring to the email addresses appearing to have already been set up in relation to the Disputed Domain Name, which, according to Complainant, implies the intention of Respondent to use these email addresses with the sequence "distribution francap" in order to send fraudulent emails.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, there are three conditions that Complainant must satisfy in order to obtain a decision that the Disputed Domain Name registered by Respondent will be deleted or transferred to Complainant:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy, Complainant must prove that the Disputed Domain Name is confusingly similar to the registered trademark in which Complainant has rights. Complainant has filed and registered the FRANCAP DISTRIBUTION trademark in France.

The Disputed Domain Name includes Complainant's trademark in its entirety. Long-standing UDRP case law highlights that confusing similarity is established when the Disputed Domain Name reproduces a trademark entirely (see sections 1.7 and 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)")).

The Panel agrees with Complainant that the Disputed Domain Name reproduces the trademark FRANCAP DISTRIBUTION, with the only differences being the change in the order of the words "francap" and "distribution", as well as the addition of the symbol "-" to separate the two words, which do not prevent from confusing this similarity.

Moreover, the generic Top Level Domain ("gTLD") ".com" is not taken into consideration when examining the identity or similarity between Complainant's registered trademark and the Disputed Domain Name, as it is viewed as a standard registration requirement.

For the aforementioned reasons, the Panel finds that the Disputed Domain Name is confusingly similar to Complainant "FRANCAP DISTRIBUTION" trademark under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, Complainant must first make out a *prima facie* case showing that Respondent lacks rights and legitimate interests in respect of the Disputed Domain Name, and then the burden of proof shifts to Respondent to come forward with evidence of rights or legitimate interests. If Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. In the present case, Respondent did not submit arguments in response to the Complaint.

Respondent has no association with Complainant and has not been authorized to use and register any domain name that includes the FRANCAP DISTRIBUTION trademark.

According to the evidence submitted by Complainant, the Disputed Domain Name resolves to a parking page connecting to PPC links competing with Complainant's business. Long-standing UDRP case law has considered 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 trademark (see section 2.9 of the [WIPO Overview 3.0](#)).

Thus, the Panel finds that Respondent has failed to demonstrate any rights or legitimate interest in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

To fulfill the third condition of paragraph 4(a) of the Policy, Complainant must prove that the Disputed Domain Name was registered and used in bad faith by Respondent.

Reference to Complainant's business in PPC links on the website to which the Disputed Domain Name resolve, and incorporation of the FRANCAP DISTRIBUTION trademark in the Disputed Domain Name, suggest actual knowledge of Complainant and its rights, business, and services at the time of registration.

The Disputed Domain Name, which is displayed prominently at the top of the page, has been used for competing commercial PPC links, which is confusing and disruptive as visitors to the site might reasonably believe that the services offered on that site are connected to or endorsed by Complainant.

Furthermore, the Panel holds that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or services offered on it. This is also likely to disrupt the business of Complainant (see for instance *Vorwerk International AG v. Host Master, Transure Enterprise Ltd*, WIPO Case No. [D2022-4237](#)).

In addition, considering the confusing similarity between the Disputed Domain Name and Complainant's prior company name and trademark as well as the distinctiveness of Complainant's trademark, it is most likely that Respondent registered the Disputed Domain Name with Complainant's trademark in mind.

In light of these factors, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith 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 <distribution-francap.com> be transferred to Complainant.

/Nathalie Dreyfus/

Nathalie Dreyfus

Sole Panelist

Date: August 1, 2023