Decision for dispute CAC-UDRP-100839

Case number	**CAC-UDRP-100839**
Time of filing	**2014-07-24 12:50:24**
Domain names	**Financo.biz**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Financo SA**

Complainant representative

Organization	**Nameshield (Laurent Becker)**

Respondent

Organization	**kiyo mochizuki**

OTHER LEGAL PROCEEDINGS

None of which the Panel is aware.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of French registered trademarks including FINANCO, registered on April 15, 2011 under application number 3747380.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

A respondent is not obliged to participate in a proceeding under the Policy but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441. See also Microsoft Corporation v. Freak Films Oy, WIPO Case No. D2003-0109; SSL INTERNATIONAL PLC V. MARK FREEMAN, WIPO Case No. D2000-1080 and ALTAVISTA COMPANY V. GRANDTOTAL FINANCES LIMITED et. al., WIPO Case No. D2000 0848.

The Complainant, founded in 1986, is a French financial company specializing in consumer credit.

The disputed domain name was registered on June 17, 2013. It resolves to a website in the Japanese language containing

information about cosmetics and diet.

There was no reply to a cease and desist letter from the Complainant to XSERVER, Inc., in whose name the disputed domain name was registered immediately prior to the filing of the initial Complaint.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

On August 22, 2014, a Response form, devoid of any material content, was filed by the Respondent.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met, in particular the requirements of UDRP Rule 2(a), and there is no other reason why it would be inappropriate to provide a decision.

Language of the proceeding

According to the Registrar, the language of the Registration Agreement for the disputed domain name is Japanese.

Pursuant to the Rules, paragraph 11, in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceedings shall be the language of the registration agreement. There is no evidence of any agreement having been entered into between the Complainant and the Respondent to the effect that the language of the proceedings should be English.

Paragraph 11(a) allows the Panel to determine the language of the proceedings having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceedings. In other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceedings: Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd., WIPO Case No. D2008-0293; Solvay S.A. v. Hyun-Jun Shin, WIPO Case No. D2006-0593.

The Complainant has requested that English be the language of the proceedings because the disputed domain name was registered in ASCII characters using the Roman alphabet. The Panel does not find this factor alone convincing. Although this factor is frequently advanced as militating in favour of English as the language of the proceedings, it is almost invariably advanced as one of several factors which, in combination, favour that conclusion. See SWX Swiss Exchange v. SWX Financial LTD, WIPO Case No. D2008-0400; Osram AG v. wangjianliang, WIPO Case No. D2012-1915; Osram GmbH v. Hui Cong, WIPO Case No. D2011-0314; Moncler S.R.L. v. Xiaolan Sun (), WIPO Case No. D2012-2058; Repetto v. ChenXiuQiang, XueYanLing, ChenXiaoLing, JiangGuiDuan and GaoChao, WIPO Case No. D2012-0690; Intesa Sanpaolo S.p.A. v. Shumei Li,

WIPO Case No. D2009-1489; “Dr. Martens” International Trading GmbH, “Dr. Maertens” Marketing GmbH v. Gisela Duggan, WIPO Case No. D2013-1002; F. Hoffmann-La Roche AG v. Private Registration, WhoisGuardService.com, WIPO Case No. D2013-1118; “Dr. Martens” International Trading GmbH, “Dr. Maertens” Marketing GmbH v. Xiao Lin, WIPO Case No. D2013-1661; E. Remy Martin & Co. v. Yanglijun, WIPO Case No. D2013-2032; Swarovski Aktiengesellschaft v. fangfei, WIPO Case No. D2012-0747; Forever New Clothing Pty Ltd. v. Su Kezeng, WIPO Case No. D2013-1497; Boulder Brands Inc. v. August n Paulsen, WIPO Case No. D2013-1487; Wal-Mart Stores, Inc. v. Wang Yulong, WIPO Case No. D2013-2157; Dr. Ing. h.c. F. Porsche AG v. Whois Agent, Domain Whois Protection Service/ jiang lei, WIPO Case No. D2014-0389; Holcim Ltd, v. Zoo / UJ0205, WIPO Case No. D2014-0718; Compagnie Gervais Danone v. Xu Xin, WIPO Case No. D2008 1864; Guccio Gucci S.p.A. v. Liuqing Wu, Feiji Lu, WIPO Case No. D2011-1506; Inter IKEA Systems B.V. v. Lei Wang, WIPO Case No. D2014-0139; and Goyard St-Honoré v. Yu Feishan, WIPO Case No. D2014-0539.

Here, there are additional factors which, in combination with the use of the Roman alphabet, indicate to this Panel that the Respondent can communicate in English and would not be unduly prejudiced, should English be adopted as the language of the proceedings, namely:

• the generic Top-Level Domain (gTLD) “.biz” was chosen. This is generally understood by English speakers as denoting “business”. The addressees of “.biz” domain names are everywhere around the world and they usually speak and understand English;

• the website to which the disputed domain name resolves, albeit predominantly in Japanese, displays prominently on the home page the words “Everywhere you go”;

• it is apparent from the case file on the CAC website that the Respondent has logged in and reviewed the Complaint and various other documents;

• the Respondent filed a timely Response, albeit non-compliant because it was devoid of material content.

In making a determination regarding the language of the proceedings, the Panel has also taken into consideration the fact the Respondent filed no submissions in relation to the language of the proceedings. Had the Respondent filed cogent submissions in support of the use of Japanese as the language of the proceedings and, in particular, contended that the Respondent is not at all proficient or conversant in the English language, the Panel would likely have determined that Japanese be the language of the proceedings.

The Panel is mindful of the need to ensure the proceedings are conducted in a timely and cost effective manner. Having considered all the matters above, and in the absence of any submissions from the Respondent, despite the abovementioned indications that the Respondent was notified of the proceedings and kept track of them, the Panel determines under paragraph 11(a) that the language of the proceedings shall be English.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds the disputed domain name to be confusingly similar to the Complainant's FINANCO trade mark, based on a visual and aural comparison of the disputed domain name and the trademark. See Wal-Mart Stores, Inc. v. Traffic Yoon, WIPO Case No. D2006-0812, the test being whether Internet users would be likely to wonder whether there is an association between the domain name and the trademark owner: see SANOFI-AVENTIS v. Jason Trevenio, WIPO Case No. D2007-0648.

The Panel finds that the FINANCO mark is distinctive. The Complainant’s assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name: Do The Hustle, LLC v. Tropic Web, WIPO Case No. D2000-0624 and the cases there cited. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Taking into account that the Complainant’s trademark is distinctive, the absence of a compliant Response despite the evidence that the Respondent was keeping track of the proceedings; and the absence of any reply to the Complainant’s cease and desist letter, the Panel concludes that the Complainant's mark must have been in the Respondent's mind when registering the disputed domain name and that the Respondent did so with intent to benefit unfairly from the reputation of the Complainant in its FINANCO mark. Accordingly the Panel finds that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **FINANCO.BIZ**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2014-09-01

Publish the Decision