Decision for dispute CAC-UDRP-102100

Case number	CAC-UDRP-102100
Time of filing	2018-07-23 10:06:34
Domain names	peuplade.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	LES INGENIEURS SOCIAUX

Respondent

Name	DANNY SULLIVAN

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies on the following rights:

- Word mark "PEUPLADE", registered in France on 25 May 2004 under no. 3293603 in classes 38, 42 and 45;

- Semi-figurative mark "P PEUPLADE.FR" registered in France on 8 April 2015 under no. 4171714 in classes 38, 42 and 45.

FACTUAL BACKGROUND

The Complainant registered the word mark "PEUPLADE" in 2004 and a logo consisting primarily of the letter "p" and the string "Peuplade.fr" in 2015, in each case in France in classes 38, 42 and 45. A social network called "PEUPLADE" has been promoted in some French media.

The Complainant registered a serie of domain names containing "peuplade" as the second level domain: <peuplade.be>, <peuplade.com> (the disputed domain name), <peuplade.es>, <peuplade.fr>, <peuplade.it>, <peuplade.net>, <peuplade.org>, <peuplade.uk>, <peuplade.xyz>.

The Complainant allowed several of these domain names to lapse. The domain name <peuplade.fr> was then registered by a third party, but was transferred to the Complainant in accordance with a decision of the French body AFNIC of 27 June 2018.

The disputed domain name was registered by the Respondent on 14 August 2017 and directed to a website where it was offered for sale. In response to an inquiry from the Complainant the Respondent offered to sell it for $4500.

"Peuplade" is a fairly infrequently used French word meaning "people", "ethnic group" or "tribe".

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that it has registered rights in the word mark "PEUPLADE" and in the logo comprising the letter "p" and the string "Peuplade.fr". The Complainant asserts that the disputed domain name is identical to the former mark and confusingly similar to the latter mark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant states that the Respondent is not using it in connection with a bona fide offering of goods or services nor making any legitimate non-commercial use of it, and that the Respondent is not commonly known by the disputed domain name.

The Complainant alleges that the disputed domain name was registered and is being used by the Respondent in bad faith. According to the Complainant, the Respondent is exploiting the Complainant's omission to renew its registration, in order to profit from the sale of the disputed domain name to the highest bidder.

The Complainant seeks a decision that the disputed domain name be transferred to it.

RESPONDENT:

The Respondent does not dispute that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The Respondent contends that he has a right or legitimate interest in the disputed domain name. He states that "peuplade' is a common French word with a dictionary meaning "tribe". He submits that where a domain name is a generic, dictionary word, the first person to register it in good faith is entitled to it and has a legitimate interest in it. He maintains that his offering the disputed domain name for sale does not negate his legitimate interest, since Panel decisions under the UDRP have recognised that speculating and trading in generic or descriptive domain names can constitute a use in connection with a bona fide offering of goods or services.

The Respondent denies that he registered or is using the disputed domain name in bad faith. He states that he is a software developer and has developed software enabling him to identify interesting expired <.com> domain names that represent foreign dictionary words. He says that he has at least 25 such domain names in his portfolio, including <aout.com>, <asigno.com>, <bakit.com>, <buttermilch.com> and <vraiment.com>. He asserts that there is a trend among startup and innovative companies to use foreign dictionary words for the names of new projects, such as "uber".

The Respondent claims that he had never heard of the Complainant when he registered the disputed domain name. He disputes that the Complainant is well-known in France or elsewhere. He points out that the Complainant's website merely has the message "Peuplade Vous donne rendez-vous tres prochainement" ("Peuplade Coming soon"), indicating that the Complainant is not currently conducting a business or providing a service at all. The Respondent adds that this is corroborated by the fact that a year elapsed between the expiry of the disputed domain name and the Complainant's pursuit of the matter.

RIGHTS

The Panel finds that the disputed domain name is effectively identical to the mark "PEUPLADE" in which the Complainant has registered rights in France. It is not necessary to consider the figurative mark also asserted by the Complainant. The first requirement of the UDRP is satisfied.

NO RIGHTS OR LEGITIMATE INTERESTS

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel does not regard the mere registration and offer for sale of the disputed domain name itself as a use of it in connection with a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy or sufficient to confer on the Respondent a right or legitimate interest in the disputed domain name.

The Respondent is not commonly known by the disputed domain name or any corresponding name. It is also clear that the Respondent is not making any legitimate non-commercial or fair use of the disputed domain name.

On the material in the file there is no other basis on which the Respondent can claim a right or legitimate interest in the disputed domain name. The second requirement of the Policy is met.

BAD FAITH

The Panel finds on the balance of probabilities that the disputed domain name was registered and is being used in bad faith.

It is clear from the Response that the Respondent has considerable knowledge of the domain name system. In view of this, the Panel considers that the Respondent is likely to have checked the history of registration of the disputed domain name before registering it, and thus to have found that it had previously been registered by the Complainant.

In addition, the Respondent has acknowledged that he appreciated that the disputed domain name comprised a French word. This being so, the Panel considers that the Respondent either did check whether "Peuplade" had been registered by any other person as a mark in France (in which case he knew that the Complainant was the registered owner of this mark); or (if he did not check this) he was reckless and wilfully blind to the possibility that the domain name corresponded to the registered mark of another party.

It is also clear from the evidence that the Respondent offered the disputed domain name for sale and it appears that he did not have any other plans for its use.

In all the circumstances, the Panel finds on the balance of probabilities that the Respondent registered the disputed domain name primarily for the purpose of sale to the Complainant or a competitor of the Complainant at a profit.

In accordance with paragraph 4(b)(i) of the Policy this constitutes evidence of the registration and use of the disputed domain name in bad faith.

This presumption is not displaced by the points made by the Respondent. Even though it appears that the Complainant's business has not yet got off the ground, this does not negate the likelihood that the Complainant registered the disputed domain name with a view to sell it to the Complainant or a competitor. Nor is "peuplade" such a commonly used word as to make it likely that the Respondent really valued it more as a generic term than as of particular interest to the Complainant.

The Panel concludes that all three requirements of the UDRP are satisfied and that the disputed domain name should be transferred to the Complainant.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name is identical to Complainant's registered mark.

No use of the disputed domain name by the Respondent except to offer it for sale.

Complainant previously registered the disputed domain name but omitted to renew it. Respondent is likely to have known

this and that Complainant had registered an identical mark. In all the circumstances, the Panel finds on the balance of probability that Respondent registered the disputed domain name primarily with a view to sell it to the Complainant or a competitor at a profit. Paragraph 4(b)(i) of the Policy applies.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PEUPLADE.COM**: Transferred

PANELLISTS

Name	**Jonathan Turner**

DATE OF PANEL DECISION 2018-09-20

Publish the Decision