Decision for dispute CAC-UDRP-102159

Case number	CAC-UDRP-102159
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Domain names	french-openlive.org

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	FEDERATION FRANCAISE DE TENNIS (FFT)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	snatch Network

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns numerous trademarks containing the expression “FRENCH OPEN”, such as:
- the international trademark no. 538170 “FRENCH OPEN” registered since June 22, 1989 in class 3;
- the international trademark no. 732452 “ROLLAND GARROS FRENCH OPEN” registered since April 17, 2000

The Complainant also owns several domain names containing the expression “FRENCH OPEN”, such as:
- frenchopen.org registered since April 9, 1996;
- frenchopen.com registered since December 17, 1997;
- myfrenchopen.com registered since March 21, 2013;
- rollandgarrosfrenchopen.com registered since November 20, 2014;
- parisfrenchopen.com registered since April 13, 2015.

The Complainant has proved its rights in the FRENCH OPEN trademark for the purposes of the Policy.

FACTUAL BACKGROUND

The Complainant was founded in 1920 and has promoted, organized and developed tennis in France. In 2017 it counted about 1.018.721 licensees.

The Complainant also provides representation of France in international meetings and organizes major tournaments such as the International of France at Roland Garros.

¨The Roland Garros is the biggest tournament of the tennis season on clay and the only Grand Slam still competing on that surface. In the tennis world with an Anglophone majority, the tournament is also known as the “French Open” since 1968, the first year of the Open era. It is one of the four Grand Slam tournaments, the second in the calendar after the Australian Open in January. The Complainant also sells the TV rights for the whole tournament to selected official and exclusive broadcasters all around the world.

The disputed domain name was registered on May 14, 2018 and points to a website offering live streaming services related to the French Open displaying the scripts: “French Open Tennis 2018” and “French Open Tennis 2018 / Live, StreamTM, Online, Watch, broadcast”.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

COMPLAINANT'S CONTENTIONS

The Complainant contends that the disputed domain nameis confusingly similar to the Complainant's international trademark FRENCH OPEN. Indeed, the disputed domain name includes in its entirety the above mentioned trademark. The addition of the generic term "LIVE” and a dash to the trademark FRENCH OPEN and the use of the gTLD ".ORG" are not sufficient elements to escape the finding that the disputed domain name is confusingly similar to the international trademark FRENCH OPEN. It does not change the overall impression of the designation as being connected to the trademark of the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its international trademark and its domain names associated.

The Complainant asserts that the Respondent is not known as the disputed domain name, but as “SNATCH NETWORK”. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark FRENCH OPEN, or apply for registration of the disputed domain name by the Complainant.

The disputed domain name points to a website offering live streaming services, with sentences such as “French Open Tennis 2018” and “French Open Tennis 2018 / Live, StreamTM, Online, Watch, broadcast”. It suggests that the Respondent aims to offer live streaming of the tournament. However, it is restricted by the Complainant, which has chosen selected official and exclusive broadcasters all around the world on different supports, like television and internet (a list of such broadcasters is attached to the Complaint as supporting document in the dispute). The Complainant contends that the Respondent is not an authorized broadcaster.

Therefore, the Respondent has registered and used the disputed domain name only in order to create a likelihood of confusion with the Complainant and its trademarks.

Thus, the Complainant contends that the Respondent has no rights or legitimate interest on the disputed domain name. Indeed, the Respondent has registered the disputed domain name only in order to attract Internet users by taking an advantage with the use of the Complainant’s trademark FRENCH OPEN in the domain name, associated with the terms “LIVE” in direct relation with the broadcasting of the French Open Tournament, therefore creating a likelihood of confusion.

The Complainant contends that the disputed domain name is confusingly similar to its international trademark FRENCH OPEN. Previous UDRP Panel have stated regarding the Complainant that the "Complainant's [French Open] trademark is widely known, and, further, that it is therefore highly unlikely that the Respondent was unaware of the Complainant's trademark when registering the Disputed Domain Name" (WIPO Case No. 20160354, Federation Francaise De Tennis v. Mahesh Shaksena, <frenchopen2016livex.com>). Thus, given the distinctiveness of the Complainant's trademark and reputation, and the use of the Complainant's trademarks FRENCH OPEN on the website, Complainant states that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark FRENCH OPEN and uses it for the purpose of misleading and diverting Internet traffic. Indeed, a Google search on the expression FRENCH OPEN displays several results, all of them being related to the Complainant.

Furthermore, the disputed domain name displays websites with information related to an unauthorized live stream of the tournament. It seems therefore hardly conceivable that the Respondent did not register the disputed domain name without the intention to create a likelihood of confusion with the Complainant's trademarks, and therefore unduly benefit from the reputation of the Complainant's trademarks.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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 and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements to obtain the transfer or the cancellation of the domain name:
(1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
(2) the Respondent has no rights or legitimate interests in respect of the domain name; and
(3) the domain name has been registered and is being used in bad faith.

1. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has provided sufficient documentary evidences to demonstrate to be owner of the FRENCH OPEN trademark since 1989.

In assessing identity or confusing similarity the Panel finds that the disputed domain name incorporates the entirety of the Complainant's FRENCH OPEN trademark and differs from such mark by merely adding the generic and descriptive term "LIVE" (which relates to the way of broadcasting the tournament and, thus, even enhances the risk of confusing similarity to

the Complainant's mark), a hyphen between the terms "FRENCH" and "OPEN" and the top-level domain name “.ORG". Thus, the disputed domain name is confusingly similar to the Complainant's trademark.

In UDRP cases where the relevant trademark is recognizable within the disputed domain name, Panels agree that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see paragraph 1.7 WIPO Overview 3.0).

UDRP Panels also agree that the top-level domain is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant’s trademark as it is a technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

Hence, this Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

2. THE RESPONDENT’S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP Panels that the Complainant shall establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent (see paragraph 2.1 of the WIPO Overview 3.0: "where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element").

The Complainant contends to have no relationship whatsoever with the Respondent. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or to register and use the disputed domain name.

The disputed domain name was registered on May 14, 2018 by a corporation, snatch Network, located in Bangladesh. Therefore, there is no evidence that the Respondent has been commonly known by the disputed domain name.

Moreover, the disputed domain name resolves to a website offering live streaming services with phrases such as “French Open Tennis 2018” and “French Open Tennis 2018 / Live, StreamTM, Online, Watch, broadcast”. Since the Respondent is not an authorized broadcaster of the French Open by the Complainant, such use of the disputed domain name is clearly not a legitimate noncommercial of fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s mark.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

3. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The Respondent has registered the disputed domain name which is to be considered confusingly similar to Complainant's mark, since it incorporates the FRENCH OPEN trademark in its entirety and differs from it merely by adding the generic and descriptive term “LIVE" and a hyphen between the terms "FRENCH" and "OPEN" and the TLD “.ORG" (which is disregarded for the purpose of determination of confusing similarity between the disputed domain name and the trademark of the Complainant as it is a technical requirement of registration).

Given the distinctiveness and reputation of the Complainant's prior mark (see also WIPO Case No. 20160354, Federation

Francaise De Tennis v. Mahesh Shaksena, <frenchopen2016livex.com>), it is inconceivable that the Respondent could have registered the disputed domain name for a mere chance without actual knowledge of the Complainant's rights in such well-known mark and the intention to exploit such reputation by diverting traffic away from the Complainant's website or from its authorized broadcasters.

The Complainant has also submitted the results of a Google search on the term "FRENCH OPEN", all of them related to the Complainant, and affirmed that due to the distinctiveness and reputation of the Complainant's mark worldwide the Respondent registered the disputed domain name with full knowledge of the Complainant's mark. The Panel finds that this is also supported by the content of the website associated with the disputed domain name where the details of the French Open 2018 are described as well.

Considering that the disputed domain name:
- is confusingly similar to the Complainant's earlier and well-known FRENCH OPEN trademark;
- was registered by a corporation, snatch Network, located in Bangladesh which is not an authorized broadcaster of the French Open by the Complainant;
- is used to offer live streaming services with phrases such as "French Open Tennis 2018" and "French Open Tennis 2018 / Live, StreamTM, Online, Watch, broadcast";
the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant and its mark (paragraph 4(b)(iv) of the UDRP Policy).

Taken into account all circumstances of this case, the Panel finds that the Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FRENCH-OPENLIVE.ORG**: Transferred

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2018-10-16

Publish the Decision