Decision for dispute CAC-UDRP-103250

Case number	CAC-UDRP-103250
Time of filing	2020-08-21 10:14:01
Domain names	frenchopenlive2020.com

Case administrator

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

Complainant

Organization	FEDERATION FRANCAISE DE TENNIS (FFT)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Solvehost web service

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant (FEDERATION FRANCAISE DE TENNIS) is the owner of the (i) French trademark FRENCH OPEN no 1512760 registered since February 3, 1989; (ii) International trademark FRENCH OPEN no 538170 registered since June 22, 1989; (iii) French trademark FRENCH OPEN no 1658995 registered since April 29, 1991 and (iv) International trademark ROLLAND GARROS FRENCH OPEN no 732452 registered since April 17, 2000. The Complainant has also registered numerous domain names including the trademark FRENCH OPEN, such as <frenchopen.org> registered since April 9, 1996.

The disputed domain name <frenchopenlive2020.com> was registered on August 3, 2020.

FACTUAL BACKGROUND

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

Founded in 1920, the Complainant promotes, organizes and develops tennis in France. It counts about 978 893 licensees in 2019. The Complainant also provides representation of France in international meetings and organizes major tournaments such as the International of France at Roland Garros. The International of France of 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. The Complainant is the owner of numerous trademarks containing the expression “FRENCH OPEN”.

The disputed domain name was registered on August 3, 2020 and redirects to an error page displaying the message “Forbidden You don't have permission to access / on this server. Additionally, a 403 Forbidden error was encountered while trying to use an ErrorDocument to handle the request.”.

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark FRENCH OPEN. Indeed, the disputed domain name includes it in its entirety. The addition of the generic term "LIVE” and the year “2020” to the trademark FRENCH OPEN and the use of the gTLD ".COM" are not sufficient elements to escape the finding that the disputed domain name is confusingly similar to the trademark FRENCH OPEN. It is well-established that “a domain name that wholly incorporates a Complainant’s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP”. Indeed, when a distinctive trademark is paired with non-distinctive terms, the combination will typically be found to be confusingly similar to the distinctive trademark. It does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademarks and its domain names associated.

Therefore, the disputed domain name is confusingly similar to the Complainant’s trademark.

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

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.

Besides, the disputed domain name redirects to an error page. Past panels have held that this use is not a bona fide offering of goods and services or a legitimate non-commercial or fair use.

Thus, the Respondent has no right or legitimate interests in respect of the disputed domain name.

The disputed domain name is confusingly similar to its trademark FRENCH OPEN. Previous UDRP panels have stated 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. Moreover, a Google search on the expression FRENCH OPEN displays several results, all of them being related to the Complainant. Consequently, given the distinctiveness of the Complainant's trademark and reputation, the Complainant can state that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark FRENCH OPEN.

Furthermore, the disputed domain name redirects to an error page. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trademark law.

Therefore, the disputed domain name was registered and is being used in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has established the fact that it has valid rights for the several national and international trademark registrations of the term FRENCH OPEN, with the validity for at least 1989.

The disputed domain name has been registered in 2020, i.e. more than 30 years after the first trademark registration.

The disputed domain name consists from four parts: FRENCH, OPEN, LIVE and 2020. The first two parts of the disputed domain name are identical to three Complainant's trademarks "FRENCH OPEN". The next two parts correspond to the generic word describing type of the broadcasting (LIVE) and the year (2020).

The addition of the third and fourth part of the disputed domain name (LIVE 2020) does not change the overall impression of the designation as being connected to the Complainant and its trademarks and use of these generic and descriptive terms more likely strengthens the likelihood of confusion between the disputed domain name and Complainant's trademark as the tournament like the FRENCH OPEN in 2020 could be broadcasted LIVE.

Furthermore, the addition of the generic top-level domain ".COM" does not change the overall impression of the designation as being connected to Complainant's trademarks.

Therefore, the Complainant has, to the satisfaction of the Panel, shown the disputed domain name is confusingly similar to the Complainant's trademarks "FRENCH OPEN" in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (ii) the respondent has no rights or legitimate interests in respect of the domain name.

The Complainant has established a prima facie case (not challenged by the Respondent who did not filed any response to the complaint) that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not related in any way with the Complainant and there is no indication that the Respondent is commonly known by the term "FRENCH OPEN" or "FRENCH OPEN LIVE 2020" or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. There is also no evidence, that the Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. The Panel agrees with Complainant and finds that Respondent's use of the domain name to resolve to a locked or inaccessible error page is not a bona fide offering of goods and services or a legitimate noncommercial or fair use pursuant to Policy.

The Panel therefore considers that 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

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (iii) the domain name has been registered and is being used in bad faith.

The Respondent has registered the disputed domain name which consists of the Complainant's trademarks "FRENCH OPEN" and two generic terms "LIVE 2020". There are no doubts that the Complainant's trademarks are distinctive and well-

known. It could be therefore concluded that the disputed domain name has been registered in bad faith as the Respondent had or should have had the Complainant and its prior trademark rights in mind when registering the disputed domain name.

Furthermore, the disputed domain name redirects to an error web page. Such passive use (i.e. use without any visible activity, when the Respondent doesn't show any other type of use of the disputed domain name) could be considered as bad faith usage. Moreover, there is no evidence, that the disputed domain name has been used for the legitimate purposes, i.e. in good faith.

Considering the (i) confusing similarity between the Complainant's trademarks and the disputed domain name, (ii) passive use of the disputed domain name, (iii) distinctiveness of the Complainant's trademarks and (iv) the failure of the Respondent to submit a response or to provide any evidence of good faith use, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

Thus, 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

The Panel considers that the Complainant has shown that the disputed domain name <frenchopenlive2020.com> is confusingly similar to the trademarks in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of the disputed domain name and the disputed domain name has been registered and is being used in bad faith. The Complainant has thus established all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FRENCHOPENLIVE2020.COM**: Transferred

PANELLISTS

Name	**JUDr. Petr Hostaš**

DATE OF PANEL DECISION 2020-09-16

Publish the Decision