

Decision for dispute CAC-UDRP-100851

Case number	CAC-UDRP-100851
Time of filing	2014-08-22 11:43:20
Domain names	harmonie-mutuelle-fr.com

Case administrator

Name	Lada Válková (Case admin)
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Complainant

Organization	HARMONIE MUTUELLE
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Complainant representative

Organization	Nameshield (Anne Morin)
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Respondent

Organization	Fundacion Private Whois
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OTHER LEGAL PROCEEDINGS

None.

IDENTIFICATION OF RIGHTS

- "HARMONIE MUTUELLE"

French trademark registration: No. 3802026.

For goods and services class: 5, 9, 10, 35, 36, 41, 44 and 45.

Registration date: January 31, 2011.

- "HARMONIE MUTUELLE"

French trademark registration: No. 3833162.

For goods and services class: 5, 9, 10, 35, 36, 37, 41, 44 and 45.

Registration date: May 20, 2011.

- "HARMONIE MUTUELLE"

French trademark registration: No. 3465460.

For goods and services class: 5, 16, 35, 36, 41 and 44.

Registration date: January 05, 2007.

FACTUAL BACKGROUND

The Complainant is a French mutual insurance company which provides access to healthcare, develops health prevention, negotiates to cut costs, deploys a network of health care and advocates a system of more cohesive social protection.

The Complainant is the owner of several trademarks HARMONIE MUTUELLE®.

The disputed domain name "HARMONIE-MUTUELLE-FR.COM" has been registered on August 05, 2014. It is not actively used.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that:

1. The domain name is identical to the Complainant's trademark HARMONIE MUTUELLE ®.

a) The domain name contains indeed the Complainant's trademark in its entirety.

The addition of dashes "-" and of the letters "FR" corresponding to France, is not sufficient to escape the finding that the domain name is confusingly similar to the trademark HARMONIE MUTUELLE.

b) When a distinctive mark is paired with less distinctive terms, the combination will typically be found to be confusingly similar to the distinctive mark (WIPO D2007-1140-MasterCard International Incorporated v. Michael J Yanda, Indy Web Productions; WIPO D2001-0026-Arthur Guinness Son & Co. (Dublin) Limited. V. Tim Healy/BOSTH; WIPO- D2000 1487-Heineken Brouwerijen B.V. v. Mark Lott).

c) The expression "HARMONIE MUTUELLE ®" is only known in relation to the Complainant. The terms "HARMONIE" and "MUTUELLE" are French ones. A Google search on the wording HARMONIE MUTUELLE ® displays several results, all of them being related to the Complainant.

2. The Respondent does not have any rights or legitimate interest in the domain name

a) The information provided by the Whois of the disputed domain name "HARMONIE-MUTUELLE-FR.COM" shows that the domain name has been registered with Whois privacy services.

b) The website in relation with the disputed domain name is inactive since its registration. Indeed, given the distinctive character of the disputed domain name, the Respondent could not have used it without harming the Complainant's prior rights.

3. The domain name has been registered and is being used in bad faith

a) Given the distinctiveness of the Complainant's trademark and reputation in France, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks (See for instance WIPO-D2004-0673 Ferrari S.p.A v. American Entertainment Group. Inc).

b) The Complainant states, that the Respondent makes explicitly reference in French to the Complainant and its trademark HARMONIE MUTUELLE in the Google's referencing of his website. Thus, it is aware of the Complainant, its trademarks and services.

c) The Complainant claims, that the website in relation with the disputed domain name is inactive since its registration. As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive

website, may be evidence of bad faith registration and use (See D2000-0003-Telstra Corporation Limited v. Nuclear Marshmallows; WIPO D2000-0400- CBS Broadcasting, Inc. v. Dennis Toeppen).

d) According to the Complainant, the fact that the disputed domain name has been registered with Whois privacy services increases the Respondent's bad faith.

RESPONDENT:

The Respondent submits that the conditions for the transfer of the domain name are not met, for the following main reasons:

- a) HARMONIE-MUTUELLE-FR.COM was registered at the beginning of August 2014, in order to edit a new website.
- b) The purpose of this new website was to make a directory website of the main Harmonie Mutuelle French agencies, by gathering information such as phone numbers, address, town, like there are already registered on other comparison website.
- c) Since the beginning of August, the disputed domain name was supposed to be developed in privacy (not open on Internet). That's why the Respondent used a privacy service, and that's why there is no information hosted on the domain name.
- d) Google did apparently succeed in crawling the domain harmonie-mutuelle-fr.com while the Respondent was working on its first private beta version. That's why we can't see some information in the Google result page. However, according to the Respondent this domain name was supposed to remain private, as long as it didn't checked any trademark potential conflicts.

However, as proof of its integrity and honesty, the Respondent is ready to abandon the disputed domain name as soon as the Complainant wants it, or submit to Harmonie Mutuelle's validation of its initial project of directory websites.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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

FIRST CONDITION

Given that

1. The domain name contains the Complainant's trademark in its entirety;

2. The addition of dashes “-” and of the letters “FR” corresponding to France, is not sufficient to escape the finding that the domain name is confusingly similar to the trademark HARMONIE MUTUELLE;

3. When a distinctive mark is paired with less distinctive terms, the combination will typically be found to be confusingly similar to the distinctive mark (WIPO D2007-1140-MasterCard International Incorporated v. Michael J Yanda, Indy Web Productions; WIPO D2001-0026-Arthur Guinness Son & Co. (Dublin) Limited. V. Tim Healy/BOSTH; WIPO- D2000 1487-Heineken Brouwerijen B.V. v. Mark Lott);

4. The Google search made by the Complainant on the wording HARMONIE MUTUELLE® displays several results, all of them being related to the Complainant. The expression HARMONIE MUTUELLE® is thus only known in relation to the Complainant;

5. The Respondent does not dispute that the Domain Name is confusingly similar to the trademark in which the Complainant has rights;

Therefore the Panel concludes that the first requirement of paragraph 4(a)(i) of the Policy is satisfied.

SECOND CONDITION

The Respondent does not oppose to the fact that the trademark is famous and that it was aware of its existence when registering the domain name. Moreover, when the Respondent claims that its project was "to make a directory website of the main Harmonie Mutuelle French agencies, by gathering information such as phone numbers, address, town, like there are already registered on other comparison website", it admits that it was aware of the existence of the Complainant.

The Respondent does not oppose to the argument that it is not a subsidiary of the Complainant, or a member of the same group, or a commercial partner, or connected in any way with the Complainant.

The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with 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. The Respondent has failed to do so.

However, the project of the Respondent could be, depending on the circumstances, considered as a right or legitimate interest, within the meaning of paragraph 4(a)(ii) of the Policy, but the Respondent has not produced any evidence to support such finding. The Panel cannot simply believe the Respondent's assertions if they are not supported by solid evidence.

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

THIRD CONDITION

The use of a privacy service cannot be, in itself, evidence of bad faith (WIPO D2007-795). However, the Respondent fails proving that its purpose was to make a directory website of the main Harmonie Mutuelle French agencies (not any document or evidence). The Panel cannot trust the Respondent if it does not produce any evidence of the alleged preparatory acts. This circumstance, together with the use of privacy service and the fact that the project was centered around the Complainant (providing information on the Complainant), is sufficient in the Panel view to demonstrate bad faith registration and use. (see also WIPO D2001-0087, General Electric Company v. CPIC NET and Hussain Syed ; WIPO D2000-0003-Telstra Corporation Limited v. Nuclear Marshmallows ; WIPO D2000-0400- CBS Broadcasting, Inc. v. Dennis Toeppen).

In addition, the Respondent does not explain the rationale behind its alleged project. The creation of such information page in relation with a famous trademark typically amount to traffic diversion and constitute evidence of bad faith use.

Accordingly, for the reasons discussed above, the Complainant has, to the satisfaction of the Panel, shown the Domain

Name has been registered and is being used in bad faith (within the meaning of 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. HARMONIE-MUTUELLE-FR.COM: Transferred

PANELLISTS

Name	Mr. Etienne Wéry
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DATE OF PANEL DECISION 2014-09-24

Publish the Decision