

Decision for dispute CAC-UDRP-105053

Case number **CAC-UDRP-105053**

Time of filing **2022-12-16 12:39:12**

Domain names **francecarglass.com**

Case administrator

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

Complainant

Organization **Belron International Limited**

Complainant representative

Organization **HSS IPM GmbH**

Respondent

Name **El Hassan Benlahrour**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant has provided evidence of multiple trademark registrations for the CARGLASS sign in numerous jurisdictions including, *inter alia*:

- French trademark CARGLASS, no. 1620650, registered on July 18, 1989, duly renewed, covering goods and services in classes 12; 21 ; 37 ; 39;
- French trademark CARGLASS (& LOGO), no. 1620651, registered on July 18, 1989, duly renewed, covering goods and services in classes 12; 21 ; 37 ; 39;
- European Union trademark CARGLASS (& LOGO), no. 001997097, registered on February 18, 2003, duly renewed and covering goods and services in classes 12; 21 and 37;
- European Union trademark CARGLASS (& LOGO), no. 011005618, registered on November 26, 2012, duly renewed and covering goods and services in classes 12; 21 and 37;
- European Union trademark CARGLASS, no. 016816803, registered on October 13, 2017 for goods and services in classes s1, 3, 4, 5, 6, 11, 19, 35, 36, 37, 40, 41, 42, 44.

In addition, Complainant has registered several domain names incorporating the trademark CARGLASS such as <carglass.com> registered on September 24, 1998, <carglass.info> registered on September 20, 2001 and <carglass.fr> registered on July 1, 2008.

FACTUAL BACKGROUND

FACTUAL BACKGROUND

Complainant is one of the worldwide leaders in business of vehicle glass repair and replacement and has proven trademark rights over the "CARGLASS" denomination in several countries, notably in the European Union.

The Disputed Domain Name <francecarglass.com> was registered by Respondent on April 26, 2022.

Prior to the present proceeding, Complainant has sent a cease-and-desist letter on July 1, 2022 to Respondent requesting the amicable transfer of the Disputed Domain Name. Respondent has not replied to such letter.

PARTIES CONTENTIONS

COMPLAINANT:

First, Complainant argues that the Disputed Domain Name is confusingly similar to its trademark CARGLASS as it includes Complainant's trademark in its entirety.

Complainant claims that the addition of the geographic term "France" does not add distinguishing character and does not prevent a finding of confusing similarity between the Disputed Domain Name and Complainant's trademark. Moreover, according to Complainant, the reference to "France" is closely connected to Complainant's business in France.

Complainant adds that the generic Top Level Domain ("gTLD") ".com" must be ignored when comparing a domain name to a trademark according to settled case law.

Complainant further asserts that Respondent has no rights or legitimate interests in the Disputed Domain Name. Indeed, Complainant states that it has not granted any license nor authorization to Respondent to register the Disputed Domain Name and that there has been no relationship of any kind between Complainant and Respondent.

Complainant also argues that Respondent is not known by the Disputed Domain Name.

Furthermore, Complainant states that the Disputed Domain Name resolves to an inactive website considering it resolves to a parking page. Complainant mentions that if such use is not per se illegitimate, the situation is different when it is connected to a third party's trademark.

Complainant also claims the distinctiveness and well-known status of its trademark citing earlier UDRP decisions in which the Panel noted the renown of Complainant's trademark CARGLASS (see for instance Belron Hungary Kft. Zug Branch v. Hartmut Clasen, Falkenber Consultants Ltd., WIPO Case Nr. D2014-2248).

Finally, Complainant concludes that Respondent registered and uses the Disputed Domain Name in bad faith. Complainant asserts that Respondent has already registered at least two domain names which include Complainant's trademark CARGLASS (the Disputed Domain Name as well as <francecarglass.fr>).

Moreover, Complainant argues that Respondent has never answered Complainant's attempts to contact him in order to amicably resolve the dispute as clearly explained in its a cease-and-desist letter requesting the amicable transfer of the Disputed Domain Name.

Complainant states that Respondent could not have ignored Complainant's trademark at the time of registration of the Disputed Domain Name and that the Disputed Domain Name registered specifically because of the reputation of its trademark, in order to create confusing similarity among Internet users.

Furthermore, Complainant has noticed that the Disputed Domain Name has been set up with MX records which means that e-mails could be sent from a "francecarglass.com" e-mail address. Therefore, Complainant is concerned that Respondent may use the Disputed Domain Name for purposes of phishing or other fraudulent activity.

RESPONDENT:

No administratively compliant Response has been filed.

RIGHTS

According to paragraph 4(a)(i) of the Policy, Complainant must prove that the Disputed Domain Name is confusingly similar to a registered trademark in which Complainant has rights.

In this regard, Complainant has submitted evidence proving its rights in the CARGLASS trademark. The trademark is notably protected in France where Respondent is located.

Complainant's trademark CARGLASS is entirely reproduced in the Disputed Domain Name. The addition of the geographic term "France", where Complainant precisely operates its activities, does not allow to distinguish the Disputed Domain Name from

Complainant's "CARGLASS" trademark.

Moreover, the TLD ".com" is not to be taken into consideration when examining the identity or similarity between Complainant's registered trademark and the Disputed Domain Name, as it is viewed as a standard registration requirement. Indeed, it is well established that the gTLD is insufficient to avoid a finding of confusing similarity.

For all of the above-mentioned reasons, the Panel finds that the Disputed Domain Name <francecarglass.com> is confusingly similar to Complainant's trademark.

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

Under Policy paragraph 4(a)(ii), Complainant must first make out a prima facie case showing that Respondent lacks rights and legitimate interests in respect of the Disputed Domain Name and then the burden of proof shifts to Respondent to come forward with evidence of rights or legitimate interests. If Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. In the present case, Respondent did not submit arguments in response to the complaint.

Respondent is neither affiliated with Complainant in any way nor has he been authorized by Complainant to use its registered trademark, or to seek registration of any domain name incorporating said trademark.

Furthermore, Respondent cannot claim prior rights or legitimate interest in the Disputed Domain Name as Complainant's trademarks precede the registration of the Disputed Domain Name for years.

Moreover, there is no evidence that Respondent has become commonly known by the Disputed Domain Name <francecarglass.com>, in accordance with paragraph 4(c)(ii) of the Policy.

Respondent cannot reasonably pretend he was intending to develop a legitimate activity through the Disputed Domain Name, which incorporates Complainant's trademark entirely.

Besides, there is no evidence that Respondent, before any notice of this dispute, was using or had made demonstrable preparations to use the Disputed Domain Name or a corresponding name in connection with a bona fide offering of goods or services, in accordance with paragraph 4(c)(i) of the Policy. The Disputed Domain Name which incorporates Complainant's trademark resolves to an inactive webpage. Therefore, no bona fide offering of goods or services has been developed with the Disputed Domain Name.

Finally, the Panel notes that Respondent has never replied to Complainant's cease-and-desist letter nor to the complaint to defend his case.

Considering the above circumstances, the Panel finds that 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

To fulfil the third requirement of the Policy, Complainant must prove that the Disputed Domain Name was registered and used in bad faith.

1) Registration in bad faith

Bad faith can be found where Respondent "knew or should have known" of Complainant's trademark rights and nevertheless registered a domain name in which they had no rights or legitimate interests (see for instance *Research In Motion Limited v. Privacy Locked LLC/Nat Collicot*, WIPO Case No. D2009-0320 and *The Gap, Inc. v. Deng Youqian*, WIPO Case No. D2009-0113).

Complainant has shown trademark rights on the CARGLASS since at least since 1989. Complainant's registered trademarks significantly predate the registration date of the Disputed Domain Name.

Besides, Complainant claims that the CARGLASS trademark is well-known, which Respondent does not contest.

It is true that a simple trademark or Internet search would have revealed the "CARGLASS" trademark to Respondent.

Finally, the fact that Respondent has not responded to the cease-and-desist letter nor to the complaint can be considered relevant in a finding of bad faith (See *News Group Newspapers Limited and News Network Limited v. Momm Amed Ia*, WIPO Case No. D2000-1623; *Nike, Inc. v. Azumano Travel*, WIPO Case No. D2000-1598; and *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. D2000-1460).

Therefore, the Panel finds that Respondent has registered the Disputed Domain Name in bad faith.

2) Use in bad faith

The Disputed Domain Name directs to an inactive page. There is no evidence of any positive action being undertaken by Respondent in relation to the Disputed Domain Name, which resolves to a parking page. This state of inactivity does not mean that the Disputed Domain Name is used in good faith as passive holding does not preclude a finding of bad faith: “A principle widely adopted by panels since shortly after the inception of the UDRP has been to examine all the surrounding circumstances in which a disputed domain name may appear to be, or is claimed to be, held passively without any evident usage or purpose” (Cleveland Browns Football Company LLC v. Andrea Denise Dinoa, WIPO Case No. D2011-0421).

Under the passive holding doctrine, bad faith use is more likely when Respondent passively holds the Disputed Domain Name, especially when the Disputed Domain Name incorporates a famous trademark (see e.g., Hugo Boss Trade Mark Management GmbH & Co. KG, et al. v. Private Registration/George Kara, WIPO Case No. D2015-0666), noting that Complainant argues that “CARGLASS” is a well-known trademark, which Respondent does not contest.

It seems that Respondent is attempting to benefit from the goodwill associated with Complainant’s trademark and it appears likely that Respondent’s primary motive in registering and using the Disputed Domain Name was to capitalize on or otherwise take advantage of Complainant’s trademark rights through the creation of initial interest of confusion.

Besides, the Panel notes that the Disputed Domain Name is connected with MX Records which enable Respondent to send e-mails using an e-mail address that includes the Disputed Domain Name. It seems inconceivable that Respondent will be able to make any good faith use of the Disputed Domain Name as part of an e-mail (See Marklinck SA v. Obabko Nikolay Vladimirovich, WIPO Case No. D2019-2371; Belron International Limited vs. Milen Radumilo, CAC-UDRP-103470).

Finally, Complainant has evidenced that Respondent has registered at least two domain names involving Complainant’s trademark (the Disputed Domain Name and <francecarglass.fr>).

In light of the above, the Panel finds that 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 Complaint was filed with the CAC (the Center) on December 15, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification. The Center sent an email communication to Complainant, on December 20, 2022, providing information disclosed by the Registrar. Complainant filed an amendment to the Complaint within the appointed deadline.

In accordance with the Rules, the Center formally notified Respondent of the Complaint, and the proceedings commenced on December 22, 2022. Respondent did not submit any response. The Respondent’s default was notified on January 12, 2023.

The Center appointed Nathalie Dreyfus as the sole panelist in this matter on January 13, 2023. The Panel finds that it was properly constituted and submitted the Statement of Acceptance and Declaration of Impartiality and Independence.

Preliminary issue: language of proceedings

The language of the proceedings should be French as it is the language of the Registration agreement.

Article 11 a) of the applicable Rules however notably provides that the Panel may determine otherwise, according to the circumstances surrounding the case.

The Panel notes that the Disputed Domain Name features the gTLD <.com> that may aim at targeting an international audience. Besides, Complainant has sent a cease-and-desist letter to Respondent prior to this proceeding, to which Respondent has not answered. Nor did Respondent make any comment about the present complaint and its language.

In view of the above, the Panel decides that the language of the proceeding should be English.

Besides, 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

1/ The Panel finds that the Disputed Domain Name is confusingly similar to Complainant’s “CARGLASS” trademarks.

2/ The Panel finds that Complainant successfully submitted evidence that Respondent has made no use of, or demonstrable preparation to use, the Disputed Domain Name in connection with a *bona fide* offering of goods or services, nor is Respondent making a fair use of the Disputed Domain Name, nor is Respondent commonly known under the Disputed Domain Name.

3/ The Panel finds that Respondent knew Complainant’s trademark when registering the Disputed Domain Name which was therefore registered in bad faith as it has been registered precisely to target such trademark. Finally, the Disputed Domain Name is used in a bad

faith manner because it resolves to an inactive page and could be used in a phishing scheme due to the MX servers configured on it. The Panel also notes that Respondent did not respond to the cease-and-desist letter sent by Complainant before the proceeding nor did he respond to the complaint.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **francecarglass.com**: Transferred

PANELLISTS

Name	Nathalie Dreyfus
------	------------------

DATE OF PANEL DECISION 2023-01-26

Publish the Decision