

Decision for dispute CAC-UDRP-105281

Case number	CAC-UDRP-105281
Time of filing	2023-03-17 09:10:51
Domain names	serrurier-vachette.com, serrurierpointfortfichet.com

Case administrator

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

Organization	ASSA ABLOY FRANCE SAS
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Complainant representative

Organization	Coöperatieve Vereniging SNB-REACT U.A.
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Respondent

Name	Simon Bolivar
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademarks Vachette and Point Fort

- International trademark **Vachette**, Reg. no: 398284, Reg. date: May 4, 1973;
- International trademark **Vachette**, Reg. no: 524674, Reg. date: May 24, 1988;
- EU trademark **Vachette**, Reg. no: 003295557, Reg. date: January 24, 2005;
- International trademark **Point Fort**, Reg. no: 946515, Reg. date: October 4, 2007.

With regards to the Point Fort trademark registration of which "ASSA ABLOY COTE PICARDE" is the proprietor, Complainant noted that this entity was merged with Complainant in 2018 and referred to the Mention dated February 11, 2018 in the Excerpt from the Primary registration in the companies and trade register of the Complainant: "Merger of the companies: ASSA ABLOY Aube Anjou SASU, 10 avenue de l'Europe Parc d'Entreprises du Grand Troyes 10300 Sainte-Savine – 552 052 672 RCS Troyes; ASSA ABLOY Cote Picarde SASU, rue Alexandre Fichet 80460 Oust-Marest – 408 024 529 RCS Amiens; JPM SAS SASU, 533 A 541 avenue du Général de Gaulle 92410 Clamart – 348 014 218 RCS Nanterre; PORTAFEU SASU, 24 rue des Hautes Rives 27610 Romilly-sur-Andelle – 391 861 069 RCS Evreux".

The disputed domain names <serrurier-vachette.com> and <serrurierpointfortfichet.com> were registered on August 27, 2020.

PARTIES CONTENTIONS

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

The Complainant, part of the renowned Assa Abloy group, designs, sells and markets security solutions for homes, among others mechanical and electromechanical locking, encoded opening devices and certified locks. These products are commercialized under Complainant's Vachette and Point Fort trademarks. Complainant furthermore offers services related to the security solutions, such as installation services. Complainant's security products are known for their high quality and innovative features and are sold on their official domains <vachette.fr> registered on March 24, 2009, and <fichet-pointfort.com> registered on September 22, 1999.

The Complainant has exclusive trademark rights which predate the registration of the disputed domain names.

(i) The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights

- The disputed domain names incorporate the "Vachette" and "Point Fort" trademarks of Complainant in its entirety. The panels have held domain names to be confusingly similar if the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name.
- The Respondent has added the generic word for "locksmith" in French – "Serrurier". The addition of such generic term cannot prevent a finding of confusing similarity and actually strengthens confusion due to the connection with the goods commercialized by Complainant (section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition).
- Concerning <serrurierpointfortfichet.com>, Complainant notes that the word "fichet", while not a part of the trademark registration, is commonly used alongside the "Point Fort" trademark of Complainant. Complainant refers to the official domain <fichet-pointfort.com> where the use of the word "fichet" in conjunction with the "Point Fort" trademark is clearly used in both the logo and the official domain name. "Fichet" is a reference to the mechanical/electronic locks commercialized by the Fichet Group, with whom Complainant signed an agreement in 1999 that includes "[...] the right for the lock division to the use the brand name Fichet". In any case, the addition of the word "fichet" cannot lead to a different conclusion under the first UDRP element, as Complainant's trademarks are fully recognizable in the domain name.

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain names

- Respondent is not making use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services – it is the date that a respondent takes possession of the disputed domain name that is relevant in determining whether it had Rights or Legitimate Interests therein. According to the Whois information, both disputed domain names have been registered on the same day, the 27 of August 2020. The disputed domain names were registered long after the Complainant registered and commenced its use of its "Vachette" and "Point Fort" trademarks. The Respondent has no rights or legitimate interests to use the Complainant's Trademark(s) in a confusingly similar manner within the disputed domain names. Complainant has no relationship whatsoever with Respondent and has never licensed or otherwise authorized the Respondent to use either the "Vachette" and "Point Fort" trademark on the websites or in the disputed domain names. The Complainant has exclusive trademark rights which predate the registration of the disputed domain names. The Respondent cannot demonstrate any legitimate offering of goods or services under either trademark. In the absence of a license or permission from the Complainant concerning the use of its trademarks, no actual or contemplated bona fide or legitimate use of the disputed domain names can reasonably be claimed.
- Respondent has not (as an individual, business, or other organization) been commonly known by the domain name – per paragraph 2.3 of the WIPO Jurisprudential Overview 3.0, the Respondent must be "commonly known" by the relevant moniker apart from the domain name. As such, Respondents are required to produce concrete credible evidence that they are commonly known by the domain name. No such credible evidence is shown anywhere on the disputed domain names by the Respondent. Furthermore, the Respondent does not hold any genuine trademark or service mark right. Use of "Vachette" and "Point Fort" on the Respondent's website, regardless of if the use is in a "trademark sense", does not itself prove that the Respondent, or any business or organization represented by it, is "commonly known" by that expression.
- Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, but are intending to use it for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue – Respondent's use of a domain name will not be considered "Fair" if it falsely suggests affiliation with the trademark owner. Past panels have found that domain names identical to a Complainant's trademark carry a high risk of implied affiliation. This conclusion is not altered where a domain name consists of a trademark plus an additional term, as panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (paragraph 2.5.1. of the WIPO Jurisprudential Overview 3.0). In this matter, Respondent has registered 2 domain names which incorporate the Complainant's trademarks in its entirety, with the addition the generic word for "locksmith" in French, "Serrurier". This is an obvious reference to the goods sold by Complainant under their Vachette and Point Fort trademarks. Respondent has registered and used the disputed domain names for the purpose of passing itself off as being (connected with) the Complainant by prominently featuring the Complainant's figurative "Vachette" and "Point Fort" trademarks at the top of every page on both disputed domain names. Confusion is heightened by such use of the Complainant's trademarks on websites which relate to services which are closely connected to the goods commercialized by Complainant under its trademarks.
- Respondent has added the following wording on the homepage of the disputed domain names:
 - <serrurier-vachette.com> "Vachette / ASSA ABLOY has created a network of approved locksmiths to meet users' needs in

terms of after-sales service, troubleshooting and advice: the L'Expert Vachette network. [...] What our customers say about our service."

- <serrurierpointfortfichet.com> "With their many years of experience, our experts at Point Fort Fichet are undoubtedly the solution you need. We ensure the installation, repair and maintenance of all your locksmith installations. We are there for you whatever your request: from the simple opening of a door to the installation of an armored door."
- Respondent essentially states that these domains are operated by Complainant due to the referencing of their trademarks and the use of words such as "our". The average internet user may be misled into believing that the website is an official domain of Complainant because of such wording. Respondent has not added any type of "Disclaimer" anywhere on the disputed domain names which clearly and unambiguously states Respondents lack of a commercial relation with Complainant. Respondent can therefore not claim any nominative fair use.
- It is also stated on each disputed domain name that it has the copyright in the content of the websites, "Copyright © 2023 Vachette. Tous droits réservés", "© 2022 Serrurier Point Fort Fichet." Apart from being false and misleading, such a fake copyright notice in a footer does not result in rights/legitimate interests.
- The Respondent does not intend to make non-commercial use of the domain names, as multiple services are allegedly being offered. Since the use made of the websites is to offer services to consumers is clearly commercial, it cannot be considered a legitimate 'non-commercial or fair use of the disputed domain names, without intent for commercial gain (...)' pursuant to paragraph 4(c)(iii) of the Policy. Moreover, a finding of bad faith also means that the Respondent's use of the domain name cannot be regarded as "fair", or "legitimate", nor as a use in connection with a bona fide offering of goods or services under paragraph 4(c)(i).

(iii) The disputed domain names were registered and are being used in bad faith

- The Complainant is the owner of the "Vachette" and "Point Fort" trademarks since 1973 and 2007 respectively. The disputed domain names have been registered on the 27 of August 2020. The disputed domain names were registered in bad faith, knowing the Complainant trademark when registering the domains, and targeting its trademarks.
- The Respondent was using the Complainant's trademarks without permission to get traffic to its websites and to obtain commercial gain by creating a false impression of a potential affiliation or connection with the Complainant. This false impression was increased by the incorporation of the Complainant's "Vachette" and "Point Fort" trademarks in the domain names, the services being offered on the websites corresponding to the disputed domain names, the use of the trademarked "Vachette" and "Point Fort" figurative mark in the Favicon of the disputed domain names and the unauthorized featuring of Complainant's trademarks in a prominent manner on the websites.
- The prominent use of the "Vachette" and "Point Fort" trademark in the disputed domain names and on the corresponding websites clearly creates a likelihood of confusion for Internet users who visit Respondent's domain names. Respondent only added the term "Serrurier" to Complainant's registered trademarks in the disputed domain names. Considering the close proximity between the services offered on the websites and the products commercialized by Complainant under its "Vachette" and "Point Fort" trademarks, it is evident that the Respondent was seeking to cause confusion.
- Where there is "use of the disputed domain name to publish a page that reproduces the look and feel of the Complainant's official website and where there are reproductions of the Complainant's logos and trademarks", this constitutes clear evidence that a Respondent has sought to cause confusion on the internet with Complainant's mark.
- Respondent is offering services which are closely related to the goods offered by Complainant under its trademarks. Such use carries a risk of implied affiliation with the Complainant. It is mala fides to register and use a domain name identical or confusingly similar to a complainant's trademark that resolves to a website that advertises or offers competing goods and services. Considering the close competitive proximity of the services, initial interest confusion arises.
- Complainant further alleges that the following 'additional bad faith consideration factors' as mentioned in paragraph 3.2.1 of the WIPO Overview 3.0 apply to the facts of this case:
 - (iii) the content of any website to which the domain name directs: as mentioned above, the Respondent has sought to impersonate and pass itself off as Complainant;
 - (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name;
 - (v) any respondent pattern of targeting marks along a range of factors, such as a common area of commerce, intended consumers, or geographic location. Respondent has registered other domain names which follow a similar naming pattern and target the same area of commerce, such as <serrurier-picard.com> - incorporating "Picard", which is an entity known for making locks (<http://www.picard-serrures.com>), <serrurier-securystar.com> - incorporating the "Securystar" trademark, <serrurier-bricard.com> - incorporating the "Bricard" trademark, <serrurier-mottura.com> - incorporating the "Mottura" trademark.
- Complainant emphasizes that the "serrurier" domains mentioned under additional factor (v) have all been registered through the same registrar, have been registered on the same day (27 of August 2020) and are hosted on the exact same IP-address. It is thus clear that the Respondent has attempted to target various trademarks in the field of security solutions.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names <serrurier-vachette.com> and <serrurierpointfortfichet.com> are 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 names <serrurier-vachette.com> and <serrurierpointfortfichet.com> (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 names <serrurier-vachette.com> and <serrurierpointfortfichet.com> have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

According to the paragraph 10(e) of the Rules of UDRP Policy “a Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules”. According to Paragraph 3(c) of the UDRP Rules states that: “The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder”.

According to Registrar, the registrant of both disputed domain names is the same person and the consolidation of both disputed domain names into one consolidated dispute is therefore allowed.

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

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; and
- ii. The respondent has no rights or legitimate interests in respect of the domain name; and
- iii. The domain name has been registered and is being used in bad faith.

I. Identical or Confusingly Similar

The Complainant has established the fact that it has valid rights for the international trademark Vachette, Reg. no: 398284, Reg. date: May 4, 1973, international trademark Vachette, Reg. no: 524674, Reg. date: May 24, 1988, EU trademark Vachette, Reg. no: 003295557, Reg. date: January 24, 2005 and international trademark Point Fort, Reg. no: 946515, Reg. date: October 4, 2007.

Both disputed domain names <serrurier-vachette.com> and <serrurierpointfortfichet.com> have been registered on August 27, 2022, i.e. more than 15 years after the last VACHETTE and POINT FORT trademark registrations, and fully incorporate the Complainant's trademarks VACHETTE and POINT FORT. They are therefore confusingly similar to the trademarks for purposes of UDRP (WIPO Jurisprudential Overview 3.0, Section 1.7).

The generic term “SERRUIER” in the first part of the disputed domain names means “locksmith” in French and explicitly describes the person usually handling with the Complainant's products (locks). The further generic term “FICHET” (“card” in French) used within the second disputed domain name is used in Complainant's own domain names such as <pointfort.com>.

Therefore, the addition of the non-distinctive terms “SERRUIER” and “FICHET” does not prevent the disputed domain names from being confusingly similar to the Complainant's trademarks. The addition of the generic top-level domain “.COM” does not change the overall impression of the designation as being connected to Complainant's trademark.

The Panel therefore considers the disputed domain names <serrurier-vachette.com> and <serrurierpointfortfichet.com> to be confusingly similar to the Complainant's trademark VACHETTE and POINT FORT which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

II. Rights or Legitimate Interests

As stated in the WIPO Jurisprudential Overview 3.0 at Section 2.1, while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the

often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 has established a prima facie case (not challenged by the Respondent who did not file any response to the complaint) that the Respondent has no rights or legitimate interests in the disputed domain names.

Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, but is intending to use it for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. The disputed domain names contain the generic words for “locksmith” (SERRUIER) and “card” (FICHET) and is an obvious reference to the goods sold by Complainant under their Vachette and Point Fort trademarks. The disputed domain names further resolve to active webpages, but these web pages suggest affiliation with the trademark owner and its trademarks. Moreover, the resolved web pages contain the fake copyright notice, text directly referring to the Complainant or its trademarks and the Respondent didn’t add any disclaimer on the webpages. Therefore, the resolved web pages and the Complainant’s trademarks use on these web pages, do not itself prove that the Respondent, or any business or organization represented by it, is “commonly known” by that expression and is making a legitimate noncommercial or fair use of the disputed domain names.

There is further no evidence, that the Respondent is known by the disputed domain names or that it has a legitimate interest over the disputed domain names. It has not been proved by the Respondent that he has rights or legitimate interests in the disputed domain names or the Respondent is related with the Complainant. Neither license nor authorization has been proven to be granted to the Respondent to make any use of the Complainant’s trademark or apply for registration of the disputed domain names.

The Panel therefore considers that the Respondent has no rights or legitimate interests in respect of the disputed domain names <serrurier-vachette.com> and <serrurierpointfortfichet.com> within the meaning of paragraph 4(a)(ii) of the Policy.

III. Registered and Used in Bad Faith

The Respondent has registered the disputed domain names which consist of the full content of the Complainant’s trademarks VACHETTE and POINT FORT and generic terms SERRUIER and FICHET that refer to the nature of Complainant’s business. Moreover, the disputed domain names are used for the webpages that reproduce the look and feel of the Complainant’s official websites and with the offer of the products similar to the Complainant’s products or services and with the direct reference to the Complainant. It could be therefore concluded that the Respondent had or should have the Complainant and its trademark in mind when registering and using the disputed domain names.

The Complainant has established the fact, that the disputed domain names create direct association to the Complainant and its business and is therefore capable of creating a likelihood of confusion of the internet users. The registration and usage of the disputed domain names could therefore potentially harm Complainant’s business by diverting traffic to a different website and violate the Complainant’s trademark rights, as well as demonstrate a lack of good faith in the registration of the disputed domain names. The addition of terms related to the complainant’s business to the trademark in the disputed domain names and use of the false copyrights of the connected web pages is a clear sign of registration in bad faith.

Considering the (i) confusing similarity between the Complainant’s trademarks and the disputed domain names, (ii) long time between the registration of the Complainant’s trademarks and the disputed domain names, (iii) use of the disputed domain names in a manner that reproduces the original Complainant’s web pages and (iv) the failure to submit a response in the UDRP proceedings and to provide any evidence of good faith use, the Panel finds that the Respondent registered and used the disputed domain names primarily with the intention of attempting to attract, for commercial gain, Internet users to its websites or other online locations, by creating a likelihood of confusion with the Complainant’s marks as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location.

The Panel therefore considers that the disputed domain names <serrurier-vachette.com> and <serrurierpointfortfichet.com> have been registered and are being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

The Panel finally considers that the Complainant has shown that the disputed domain names <serrurier-vachette.com> and <serrurierpointfortfichet.com> are 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 names and the disputed domain names have 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. **serrurier-vachette.com**: Transferred

2. serrurierpointfortfichet.com: Transferred

PANELLISTS

Name Petr Hostař

DATE OF PANEL DECISION 2023-04-19

Publish the Decision