

Decision for dispute CAC-UDRP-105364

Case number	CAC-UDRP-105364
Time of filing	2023-05-03 10:26:14
Domain names	abeille-parachutisme.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	ABEILLE PARACHUTISME, EURL
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Complainant representative

Organization	ABEILLE PARACHUTISME, EURL
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Respondent

Name	Mikael Christopher Jean-Francois Priol
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant proved to be the owner of the French Trademark Reg. no. 3983774 for "**Abeille Parachutisme**" (device) filed on February 18th, 2013 and registered on July 26th, 2013. The trademark is expired on February 18th, 2023 but still in the 6 months renewal grace period.

FACTUAL BACKGROUND

I - The Complainant

According to the information provided by the Complainant, ABEILLE PARACHUTISME, EURL is a company established in 1996 in France. Abeille Parachutisme, SASU provides tandem parachute jumping services on its main drop zone and on additional drop zones. The progression of Abeille Parachutisme has been constant for 13 years and has exceeded 100,000 free fall baptisms in tandem parachute in August 2022, since the creation of the company. The Complainant's website is located at abeilleparachutisme.fr.

II - The Respondent

According to the Registrar Verification, the current registrant of the disputed domain name is Mikael Christopher Jean-Francois Priol which, on the basis of the information disclosed by the Registrar, registered the <abeille-parachutisme.com> on February 6 1999. The

disputed domain name was used in the field of parachute jumping services.

PARTIES CONTENTIONS

I - The Complainant

As regards the First element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to its prior trademark "**Abeille Parachutisme**" since the trademark is entirely included in the disputed domain name.

As regards the Second element of the Policy, the Complainant alleges that the Respondent has no connection or affiliation with Complainant and has not received any license or consent to use the trademark in a domain name or in any other manner. The Complainant also supports that:

- The Respondent has not used the phrase "ABEILLE PARACHUTISME" in commerce to identify itself and its services;

- The Respondent has not requested registration of service mark "ABEILLE PARACHUTISME"

As regards the Third element of the Policy, the Complainant supports that the Respondent registered and uses the disputed domain name in bad faith as Respondent diverts Internet users to its own website to sell its services. Moreover the Complainant claims that the disputed domain name imitates its trademarks.

II - The Respondent

The Respondent did not file a reply.

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 not proved, in the opinion of the Panel, that the Respondent does not have 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 not proved, in the opinion of the Panel, that 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

1. The disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Panel agrees that the disputed domain name is confusingly similar to the **Abeille Parachutisme** device trademark. According to a consolidated case law if the trademark is entirely comprised in the disputed domain name, the threshold requested by the First element of the Policy is met.

In the Panel's view the addition of the ".com" gTLD must be disregarded for assessing confusing similarity in view of its technical function as well as the "-" element.

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, for the

purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a response to the Complaint. Therefore, it has filed no information on possible rights or legitimate interests it might hold on the domain name <abeille-parachutisme.com>.

That being said, the Panel supports that the evidence filed by the Complainant is not sufficient to prove that the Respondent does not own rights or legitimate interests on the disputed domain name. As a matter of fact, <abeille-parachutisme.com> was registered on February 6 1999 by the current registrant (Respondent in this procedure). In its Complaint, the Complainant supports that it previously owned the disputed domain name until it lost registration a few years ago and that the Respondent registered the disputed domain name after the Complainant lost it. However such allegations do not correspond with the information provided by the Registrar according to which the disputed domain name was registered by the current registrant (Respondent) since February 6th 1999. Moreover, the Complainant did not provide any evidence showing how and when it lost control over the disputed domain name. In particular the Complainant contends that he lost control "a few years ago" but did not show, for example, through screenshots that this effectively happened and since when. The Complainant did not prove either that it was the first registrant of the disputed domain name.

All above considered, the Panel is not in the conditions to exclude that the Respondent lacks rights or legitimate interests in the disputed domain name.

3. Registrations and use in bad faith

From the information in the hands of the Panel, the disputed domain name was registered on February 6, 1999 which is well before the registration of the Complainant's trademark (2013) and domain name <abeilleparachutisme.fr>(2009). Indeed the Complainant claims to have started its business in 1996 but did not provide any evidence that he has acquired unregistered trademark rights dating back to that date. Nor the Complainant has proved that it first registered the disputed domain name and that it subsequently lost control of it, leaving it free for registration by the current registrant.

The Panel's consolidated approach is that, where a respondent registers a domain name before the complainant's trademark rights accrue, there will not normally be a finding of bad faith on the part of the respondent. Unless the Complainant proves for example that a domain name was registered: (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent's insider knowledge (e.g., a former employee), (iii) further to significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant's filing of a trademark application.

The Respondent did not provide any evidence in this regard.

Therefore the Panel excludes that the disputed domain name was registered and is used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **abeille-parachutisme.com**: Remaining with the Respondent

PANELLISTS

Name	Andrea Mascetti
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DATE OF PANEL DECISION 2023-06-06

Publish the Decision