

Decision for dispute CAC-UDRP-105700

Case number **CAC-UDRP-105700**

Time of filing **2023-08-14 09:48:06**

Domain names **leparisen.com**

Case administrator

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

Complainant

Organization **LE PARISIEN LIBERE**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **Kacper Golonka**

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 is, inter alia, a registered owner of the following trademarks containing a word element "LE PARISIEN":

- LE PARISIEN (word), French national trademark, priority date 14 May 1998, trademark no. 98732442, registered for goods and services in classes 9, 14, 16, 18, 24, 25, 26, 28, 35, 36, 39, 41, and 42; and
- LE PARISIEN (device), French national trademark, priority date 14 May 1998, trademark no. 98732441, registered for goods and services in classes 9, 14, 16, 18, 24, 25, 26, 28, 35, 36, 39, 41, and 42.

(collectively referred to as "Complainant's trademarks").

The Complainant has also registered several domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term "LEPARISIEN".

FACTUAL BACKGROUND

The Complainant, LE PARISIEN LIBERE, SAS, is a French daily newspaper covering both international and national news, and local news of Paris and its suburbs. The paper was established as "Le Parisien libéré" by Émilien Amaury in 1944, and was published for the

first time on 22 August 1944.

The disputed domain name <leparisen.com> was registered on 23 July 2023 and is held by the Respondent.

The domain name website (i.e. website available under internet address containing the disputed domain name) is currently not used and has no content available to public (i.e. the disputed domain name is not currently associated with any active website).

The Complainant seeks transfer of the disputed domain name to Complainant.

PARTIES CONTENTIONS

COMPLAINANT:

CONFUSING SIMILARITY

The Complainant states that:

- The disputed domain name is identical to its Complainant's trademarks and to its domain names.
- The obvious misspelling of the Complainant's trademarks (i.e. the omission of the letter "I") is intended to create confusing similarity between the Complainant's trademarks and the disputed domain name.
- The disputed domain name represents a clear case of so called "typosquatting" which means that the disputed domain name is based on an obvious misspelling of the Complainant's trademarks.
- Thus, according to the Complainant the confusing similarity between Complainant's trademarks and the disputed domain name is clearly established.
- The Complainant refers to previous domain name decisions in this regard.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain name.
- The Complainant has not authorized, permitted or licensed the Respondent to use Complainant's trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by the disputed domain name.
- Furthermore, the domain name website has been during its existence inactive, which implies that there was no Respondent's intention to use the domain name for legitimate purposes.
- The Complainant refers to previous domain name decisions in this regard.

BAD FAITH REGISTRATION AND USE

The Complainant states that:

- Seniority of the Complainant's trademarks predates the disputed domain name registration and such trademarks are well known in relevant business circles. The Respondent can be considered to be aware of the Complainant's trademark when registering the domain name due to well-known character thereof, which should have been checked by the Respondent by performing a simple internet search.
- The disputed domain name (at the time of filing of the complaint) did not resolve to any active website. In the light of the foregoing, the Complainant asserts that the disputed domain name was registered and used with the sole purpose of selling the disputed domain name to the Complainant or its competitors.
- It is well-founded that registration of the disputed domain name that is confusingly similar to the Complainant's trademarks which enjoys strong reputation, plus other facts, such as above-described non-use of the disputed domain name and Respondent's engagement in typosquatting, are sufficient to establish bad faith under the 4(a)(iii) of the Policy.
- The Complainant refers to previous domain name decisions contending that registering a domain name (i) incorporating trademarks that enjoy high level of notoriety and well-known character and at the same time (ii) abusing typosquatting, constitute prima facie registration in bad faith, despite a fact that such domain names are not genuinely used.

RESPONDENT:

The Respondent has not provided any response to the complaint.

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, 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

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

RIGHTS

Since the domain name and the Complainant's trademarks are not entirely identical, the key element investigated and considered by the Panel is whether the disputed domain name consisting of a term "LEPARISEN" is confusingly similar to the Complainant's trademarks.

The threshold test for confusing similarity under the UDRP involves a comparison between the trademark and the disputed domain name itself to determine likelihood of Internet user confusion. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. An addition of common, dictionary, generic, or other descriptive terms is typically insufficient to prevent threshold Internet user confusion. Confusing similarity test under the UDRP typically involves a straightforward visual and aural comparison of the trademark with the domain name in question.

The disputed domain name and the Complainant's trademarks are nearly identical since they differ only in one character – the second letter "l" from the Complainant's trademarks is omitted in the disputed domain name (LE PARISEN vs. LE PARISIEN).

This, however, cannot prevent the association in the eyes of internet public between the disputed domain name and the Complainant's trademarks and thus the likelihood of confusion still exists.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e., the ".com") must be disregarded under the identity and confusing similarity tests as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

In addition, given the fact that (i) the disputed domain name has not been genuinely used and (ii) in the absence of the Respondent's response, the Panel concludes that there is no indication that the domain name was intended to be used in connection with a bona fide offering of goods or services as required by UDRP.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of Policy).

BAD FAITH

The Respondent has not used the disputed domain names in any manner, however, the Panel concludes (as it has been ruled in many similar cases, as for example *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, <telstra.org>, *Jupiters Limited v. Aaron Hall*, WIPO Case No. D2000-0574, <jupiterscasino.com>, *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. D2002-0131, <ladbrokepoker.com>) that the apparent lack of so-called active use (e.g. to resolve to a website) of the domain name(s) without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith.

Examples of what may be cumulative circumstances found to be indicative of bad faith include cases in which (i) the Complainant has a well-known trademark and (ii) there is no genuine use (e.g. a mere "parking") of the disputed domain name by the Respondent (irrespective of whether the latter should also result in the generation of incidental revenue from advertising referrals).

In addition, it is clear that by omitting a single letter from the Complainant trademarks (letter "I" is missing in the disputed domain name compared to the Complainant's trademarks) while all other characters of the disputed domain name are identical to the Complainant trademark (compare LA PARISEN and LA PARISIEN) it was Respondent's intention to target Internet users who incorrectly type a website address into their web browser, an illicit activity recognised as „typosquatting“. There are several different reasons for typosquatting, as for example:

- to try to sell the disputed domain back to the Complainant;
- to monetize the disputed domain through advertising revenues from direct navigation misspellings of the intended domain;
- to redirect the typo-traffic to Complainant's competitor;
- as a phishing scheme to mimic the Complainant's site, while intercepting passwords or other information which the visitor enters unsuspectingly;
- To install drive-by malware or revenue generating adware onto the visitors' devices;
- To harvest misaddressed e-mail messages mistakenly sent to the typo domain.

All of the activities above are considered as malicious activities.

For the reasons described above, since (i) there is only a remote chance that the Respondent has registered the disputed domain name just by a chance and without having a knowledge about the existence of the Complainant's rights and business (ii) there is no real use of the dispute domain name and (iii) the Respondent is engaged in typosquatting, the Panel contends, on the balance of probabilities, that the disputed domain name has been registered and is being used by the Respondent in bad faith.

Thus, the Panel has taken a view 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).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **leparisen.com**: Transferred

PANELLISTS

Name	Jiří Čermák
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DATE OF PANEL DECISION 2023-09-18

Publish the Decision
