

Decision for dispute CAC-UDRP-105873

Case number	CAC-UDRP-105873
Time of filing	2023-10-12 10:00:57
Domain names	pole-emploi-recrutement.online

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	POLE EMPLOI
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Emile EIE
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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 is the owner of several trademarks for “POLE EMPLOI”, such as:

- the French trademark POLE EMPLOI® n° 3582798 registered since June 18th, 2008; and
- the European trademark POLE EMPLOI® n° 007499007 registered since December 18th, 2008.

The Complainant also owns several domain names comprising the trademark POLE EMPLOI, such as:

- <pole-emploi.fr>, registered since October 10th, 2008; and
- <pole-emploi.org>, registered since October 10th, 2008.

FACTUAL BACKGROUND

The Complainant is the public employment service in France set up to compensate job seekers and support them in returning to work and guide companies in their recruitment.

The disputed domain name <pole-emploi-recrutement.online> was registered on September 25th, 2023 and resolves to a parking page. MX servers are configured.

PARTIES CONTENTIONS

COMPLAINANT:

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The disputed domain name <**pole-emploi-recrutement.online**> is confusingly similar to the Complainant's trademark POLE EMPLOI®.

The addition of the term "RECRUTEMENT" (meaning "recruitment" in French) is not sufficient to avoid the finding that the disputed domain name is confusingly similar to the trademark. It does not change the overall impression that the disputed domain name is connected to the Complainant's trademark.

Thus, there is a likelihood of confusion between the disputed domain name and the Complainant's trademark. It is well-established that *"a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP"*. WIPO Case No. D2003-0888, *Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin*.

Furthermore, the addition of the new gTLD ".online" does not change the overall impression of the disputed domain name being connected to the trademark of the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant's trademark.

B. The Respondent has no rights or legitimate interests in respect of the domain name

The Respondent is not commonly known by the disputed domain name. Past panels have held that it can be inferred that a Respondent is not commonly known by a disputed domain name if the Whois information is dissimilar to the disputed domain name.

The Respondent is not affiliated with or authorized by the Complainant in any way. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, and does not have any business with the Respondent.

No licence or authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's trademark POLE EMPLOI®, or apply for registration of the disputed domain name <pole-emploi-recrutement.online>.

The disputed domain name resolves to a parking page. The Respondent has not made any active use of the disputed domain name.

C. The domain name was registered and is being used in bad faith

The disputed domain name <pole-emploi-recrutement.online> is confusingly similar to the Complainant's distinctive trademark registered years before the registration of the disputed domain name.

The term "POLE EMPLOI RECRUITMENT" has no meaning, except in relation to the Complainant.

Given the distinctiveness of the Complainant's international trademark, the Respondent, who is French, has registered the domain name in actual knowledge of the Complainant, which evidences bad faith.

The disputed domain name resolves to a parking page. The Respondent has not carried out any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as being passing off, an infringement of consumer protection legislation, an infringement of the Complainant's rights under trademark law, or an attempt to attract, for commercial gain, Internet users to the Respondent's own website, by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website.

MX servers are configured which suggests that the disputed domain name may be actively used for email purposes. Please see CAC Case No. 102827, *JCDECAUX SA v. Handi Hariyono* ("*There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.*").

RESPONDENT:NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

The disputed domain name registered in 2023 is confusingly similar to the Complainant's POLE EMPLOI trade mark (registered as French and European trade marks since 2008 for employment related services) adding only hyphens, the generic word 'recruitment' and the gTLD online which do not prevent said confusing similarity.

The Respondent does not appear to be commonly known by the disputed domain name and is not authorised by the Complainant.

The disputed domain name has not been used for an active site and points to a holding page so there has been no bona fide use for goods or services and no legitimate non commercial fair use.

The Respondent has not filed a Response and has not rebutted the prima facie case evidenced by the Complainant herein.

The passive holding of a mark containing a distinctive trade mark with a reputation without any explanation is commonly held to be registration and use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **pole-emploi-recrutement.online**: Transferred

PANELLISTS

Name	Dawn Osborne
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DATE OF PANEL DECISION 2023-11-08

Publish the Decision