

Decision for dispute CAC-UDRP-105859

Case number **CAC-UDRP-105859**

Time of filing **2023-10-09 09:55:24**

Domain names **aujourdhuienfrance.site**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **LE PARISIEN LIBERE, SASU**

Complainant representative

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

Respondent

Name **Eric Dupont**

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 evidence shows the Complainant owns several trademarks including the French distinctive wordings "AUJOURD'HUI EN FRANCE".

Trademark	Jurisdiction	Registration No	Registration Date
AUJOURD'HUI EN FRANCE	France	94510361	March 10, 1994
AUJOURD'HUI EN FRANCE	France	3372963	July 28, 2005
AUJOURD'HUI EN FRANCE TOUT VOUS CONCERNE	France	4292711	September 2, 2016
AUJOURD'HUI EN FRANCE TOUT VOUS CONCERNE	France	4294538	December 16, 2016

The Complainant also owns a domain names portfolio, including the distinctive wording AUJOURD'HUI EN FRANCE, such as the domain names <aujourd'hui-en-france.com> registered since March 21, 2007 and <aujourd'hui-en-france.fr> registered since March 23, 2007.

FACTUAL BACKGROUND

The Complainant is a French daily newspaper with a wide readership that covers international, national, and local news, particularly focusing on Paris and its suburbs.

It was originally founded as "Le Parisien libéré" by Émilien Amaury in 1944 and made its inaugural publication on August 22, 1944.

Over time, it expanded its reach and introduced a national edition called "Aujourd'hui en France" in 1994, solidifying its position as one of France's leading national daily newspapers.

The newspaper, known as Le Parisien Aujourd'hui en France boasts a monthly readership of around 18 million.

The disputed domain name <aujourdhuienfrance.site> was registered on September 19, 2023 and resolves to an inactive website.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

The Respondent filed a statement on October 12, 2023 named "Request for an Amicable Resolution" stating:

"I would like to emphasize that when I initially registered the domain name "aujourdhuienfrance.site," I was not aware of any potential trademark conflicts or infringements. My intention was to develop a website with no knowledge of the Complainant's trademark rights. Unfortunately, I only became aware of this issue after receiving the UDRP complaint.

In light of the circumstances and in an effort to reach an amicable resolution, I propose the following:

I am willing to transfer the domain name "aujourdhuienfrance.site" to the Complainant or close it completely.

In exchange for the transfer of the domain name and as a reimbursement for the expenses I have incurred, I kindly request a reimbursement of the total amount of 2,450 EUR, which represents the costs associated with the domain name registration and the development of the website. These expenses include:

- a. Domain Name Registration Fees
- b. Website Development Costs
- c. Brand creation associated Costs

I want to assure the Complainant that my intent was never to infringe upon their rights, and I am committed to resolving this matter amicably. I believe that this proposed solution is a fair and reasonable way to address the situation.

I kindly request the Complainant's prompt attention to this matter, and I am open to discussing any terms and conditions that will facilitate the swift resolution of this dispute."

The Respondent failed to file an administratively compliant response.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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).

The Panel accepts that the Complainant has rights by reason of its ownership of the registered trademark "AUJOURD'HUI EN FRANCE". See F. Hoffmann-La Roche AG v. Relish Enterprises, WIPO Case No. D2007-1629.

The question is whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

Whether a disputed domain name is identical or confusingly similar to a trademark can be determined by making a side-by-side comparison with the disputed domain name. See Research in Motion Limited v. One Star Global LLC, WIPO Case No. D2009-0227. A disputed domain name is identical to the trademark when it is a character for character match. It is confusingly similar when it varies the

trademark by, for example, adding generic terms to the dominant part of the trademark.

The Complainant asserts that the disputed domain name <aujourdhuienfrance.site> is identical to its own trademarks and domain names as being included in its entirety.

Here, the disputed domain name is clearly identical to the Complainant's trademark.

It is also trite to state that the addition of the new gTLD ".site" does not add any distinctiveness to each of the disputed domain names and will be disregarded for the purposes of considering this ground.

Accordingly, the Panel considers that the disputed domain name is identical or confusingly similar to the Complainant's trademark "AUJOURD'HUI EN FRANCE" and this ground is made out.

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).

A complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. See Document Technologies, Inc. v. International Electronic Communications Inc, WIPO Case No. D20000270.

If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See Croatia Airlines d.d. v. Modern Empire Internet Ltd, WIPO Case No. D2003-0455; Mile, Inc. v. Michael Burg, WIPO Case No. D2010-2011.

The Complainant contends as follows:

1. The Respondent is not identified in the Whois database as the disputed domain name and is not commonly known by the disputed domain name.
2. The Respondent has no rights or legitimate interests in the disputed domain name and is not affiliated with the Complainant in any way.
3. It has not granted any licence or authorization to the Respondent for the use of its trademark or the disputed domain name.
4. The disputed domain name is inactive, and there is no demonstrable plan by the Respondent to use it for any legitimate purpose.

The Panel considers that evidence adduced to support the contentions establish a prima facie case that the Respondent lacks rights or legitimate rights in the disputed domain name.

Accordingly, the burden falls on the Respondent to demonstrate its rights or legitimate interests in the disputed domain name.

On October 12, 2023, the Respondent communicated to the CAC via the non-standard communication form that he was not aware of any potential trademark conflicts or infringements when he initially registered the disputed domain name, and intended to develop a website, and requested for an amicable resolution stating that he was willing to transfer the disputed domain name in exchange for reimbursement for the expenses he incurred.

On the same day, the Complainant responded via the non-standard communication form that it was willing to settle the matter amicably only if the Respondent proceed with the transfer of the disputed domain name without any cost.

The Panel observes that there has not been any resolution between the parties.

While the Respondent states in his non-standard communication form that he was not aware of any potential trademark conflicts or infringements, the Panel observes that the address of the Respondent is located in Paris, France where the Complainant's national daily newspaper is widely circulated bearing its trademark.

In any event, the Respondent has chosen not to file any administratively compliant response to adduce evidence of his rights or legitimate interests in respect of the disputed domain name.

The Panel can only infer from such omission that there is lack of a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name.

Given the evidence adduced by the Complainant of its portfolio of trademarks and reputation which the Panel accepts as evidencing the strength of its reputation, the Panel accepts and finds that the Respondent has no rights or legitimate interests to the disputed domain name.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown 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).

There are two elements that must be satisfied – registration and use in bad faith.

The Complainant contends, upon the evidence adduced, that the Respondent registered and used the disputed domain name in bad faith based on the following grounds:

1. **Prior Knowledge of Complainant's Trademark:** The Complainant has a long-standing presence in the market since 1994, with its trademark being widely recognized as a leader of news publication in France. The registration of the disputed domain name, which is identical to the Complainant's trademark, suggests that the Respondent was likely aware of the Complainant's rights, indicating bad faith registration.
2. **Inactivity and Lack of Legitimate Use:** The disputed domain name currently points to an inactive webpage, and there is no indication of any legitimate use. The Complainant asserts that this inactivity, coupled with the incorporation of its well-known trademark, implies bad faith use and registration.
3. **Misleading MX Servers Configuration:** While MX servers are configured for the disputed domain name thereby suggesting that the disputed domain name is being actively used for email purposes, it asserts that the Respondent cannot make any good faith use of the disputed domain name for email purposes. This is further evidence of bad faith.

The Panel has already alluded to the Respondent seeking to resolve the matter with the Complainant. The Respondent has requested on three occasions, i.e, on October 25, 2023, November 7, 2023, and November 13, 2023, to suspend the proceeding due to settlement negotiations. On each occasion, the Complainant disagreed with the request.

Despite communications via the non-standard communication form, the Respondent has not filed any administratively compliant response.

The Panel considers that the disputed domain name's complete identity with the Complainant's trademark leads to a strong inference that the Respondent possessed prior knowledge of the Complainant's established rights.

The Panel is persuaded by the surrounding circumstances supporting the Respondent's knowledge, i.e, the Respondent's address is located in France; and the Complainant's trademark is well known due to its wide circulation as one of France's leading national daily newspaper.

This knowledge, combined with the registration of the disputed domain name under the new gTLD ".site," creates a strong inference that the Panel is prepared to accept that the Respondent intended to take advantage of the Complainant's brand and reputation. Such actions are emblematic of bad faith registration. The Respondent cannot seek to hide behind the convenient statement of words to the effect that "I did not know of your rights when I registered the disputed domain name" and then seek to recover the costs associated with such registration.

Furthermore, the Panel notes that the disputed domain name remains inactive, arguably devoid of any legitimate use despite the Respondent stating in his non-standard communication that he was intending to develop the website. Such a statement is incredulous considering that the disputed domain name is identical to the Complainant's trademark and is the name of one of France's leading national daily newspaper.

The absence of a credible explanation for this inactivity implies that the Respondent is likely holding the disputed domain name for undisclosed purposes. In the absence of any plausible justification for maintaining the disputed domain name, this conduct aligns with a use in bad faith, consistent with findings of other panels.

Lastly, the Panel observes that the configuration of MX servers for email purposes raises concerns. While configuring MX servers might seem innocuous, the circumstances surrounding the disputed domain name, including its similarity to the Complainant's trademark and the absence of legitimate connections, suggest potential misuse. The Respondent's intent to use the disputed domain name for email communication, without a legitimate basis, reinforces the inference of bad faith.

Accordingly, the Panel finds that the disputed domain name was registered by the Respondent and used in bad faith.

PROCEDURAL FACTORS

When forwarding a Complaint, including any annexes, electronically to the Respondent, paragraph 2 of the Rules states that CAC shall employ reasonably available means calculated to achieve actual notice to the Respondent.

Paragraphs 2(a)(i) to (iii) set out the sort of measures to be employed to discharge CAC's responsibility to achieve actual notice to the Respondent.

On November 13, 2023, the CAC by its non-standard communication stated as follows (omitting irrelevant parts):

That email notice sent to <postmaster@aujourdhuienfrance.site> was returned back undelivered as the email address had permanent fatal errors.

The email notice was also sent to <grishjan@gmail.com> and it was delivered and the Respondent had successfully logged onto the Platform.

No further e-mail address could be found on the disputed site.

The Respondent accessed the online platform and filed some nonstandard communications.

Given the reasonable measures employed by CAC as set out in the above non-standard communication, the Panel is satisfied that all procedural requirements under UDRP are met and there is no other reason why it is inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant is the owner of the trademark "AUJOURD'HUI EN FRANCE" and the corresponding domain name <aujourdhuienfrance.com> in connection with the services it provides.

The Complainant challenges the registration of the disputed domain name <aujourdhuienfrance.site> under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy and seeks the transfer of the disputed domain name to the Complainant.

The Respondent failed to file any administratively compliant response despite seeking to engage in negotiations via the non-standard communications form which the Complainant has rejected.

The Panel finds in favour of the Complainant and directs that the disputed domain name should be transferred to the Complainant. The decision is based on the following principal reasons:

1. The disputed domain name <aujourdhuienfrance.site> is identical or confusingly similar to the "AUJOURD'HUI EN FRANCE" trademark to which the Complainant holds rights. The mere addition of the gTLD ".site" does not eliminate the overall identity or similarity, as the term "aujourdhuienfrance" is directly related to the Complainant's trademark and business.
2. There is a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not presented any evidence to the contrary. Furthermore, the Respondent is not commonly known by the disputed domain name; there is no evidence to show that he has used it for a bona fide offering of goods or services; and has not made non-commercial or fair use of it.
3. The Panel finds the Respondent registered and used the disputed domain name in bad faith. This finding is based on the strong inference of the Respondent's likely prior knowledge of the Complainant's trademark given that it is a French national daily newspaper widely circulated in the location of the Respondent's residence; the inactivity of the disputed domain name despite claims of development; and the configuration of MX servers without a legitimate purpose. These factors collectively support the inference of bad faith in registration and use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **aujourdhuienfrance.site**: Transferred

PANELLISTS

Name	William Lye OAM KC
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DATE OF PANEL DECISION 2023-11-17

Publish the Decision
