Decision for dispute CAC-UDRP-107279

Case number	CAC-UDRP-107279
Time of filing	2025-01-31 09:43:32
Domain names	parcasterixs-fr.fun, parcasterix.fun, parca-sterix.fun, parcasterix.online, parcasterixs.online, parcasterix-fr.online, fr-parcasterix.online, fr-parcasterix.uno, parcasterix-fr.uno, parcasterix-fr.fun, fr-parcasterix.fun, parcasterixs.uno, parcasterixs-fr.uno, parcasterixs-fr.online, parca-sterix.uno, parcasterix.uno

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Les Editions Albert René

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Sergeev Dmitry

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 trademarks including “ASTERIX”, including but not limited to:

- French trademark ASTERIX & dev., No. 1378113, registered on November 05, 1986;
- International trademark ASTERIX et OBELIX, & dev., No. 373128 registered on October 23, 1970;
- French trademark TOUTATIS PARC ASTERIX n° 4827658 registered on December 20, 2021.

The Complainant also owns a number of domain names, including the domain names <asterix.com> registered on October 19, 1995 and <parcasterix.com> registered on January 17, 1997.

FACTUAL BACKGROUND

The Complainant is a French publishing house created in 1979. The Complainant is the owner of French comic album series “Astérix”. The complainant also grants licenses for derivative products and promotional operations, notably for the “Parc Astérix”

near Paris.

The disputed domain names were registered on December 10, 2024 and at the moment of filing the Complaint redirected consumers to content impersonating the Parc Astérix, or diverted them to competing activities. At the time of this decision, the disputed domain names resolve to inactive websites.

PARTIES CONTENTIONS

A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

(1) The disputed domain names are confusingly similar to the Complainant's ASTERIX The Complainant holds rights to the ASTERIX trademark. Each of the disputed domain names incorporates the ASTERIX trademark in its entirety. Furthermore, the addition of French term "PARC" ("PARK") refers to the amusement park of the Complainant. It does not change the overall impression of the designation as being connected to the Complainant's trademark. The addition of the new generic top-level domains (gTLDs) does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated.

(2) The Respondent has no rights or legitimate interests in the disputed domain names. The Complainant has never assigned, granted, licensed, sold, transferred, or otherwise authorized the Respondent to register or use the ASTERIX trademark in any manner. The Respondent has never been commonly known by any of the disputed domain names and has not acquired any trademark rights in them. By registering disputed domain names, the Respondent's intention is to prevent the Complainant from exercising its legitimate rights over the ASTERIX trademark, in which the Complainant has prior rights.

(3) The disputed domain names should be considered as having been registered and used in bad faith by the Respondent. The ASTERIX trademark is clearly famous and widely known. The fact that the Respondent was aware of the Complainant and the Complainant's ASTERIX Trademark at the time of registration of the disputed domain names is beyond doubt, given that disputed domain names are confusingly similar to the Complainant's ASTERIX Trademark. Moreover, the addition of the French descriptive term "PARC" to the Complainant's Trademark in the disputed domain names also evidences well awareness of the Respondent about the Complainant and its business, as the Complainant has been involved in the theme park business since 1989, i.e., 35 years prior to the disputed domain names were registered. Furthermore, the Respondent's knowledge of the Complainant's ASTERIX Trademark is also supported by the use of the disputed domain names, which were previously resolved to the commercial websites apparently offering the services for PARC ASTERIX, which are competitive with the Complainant's services. At the same time, the websites under the disputed domain names contain no information about the Respondent, with the exception of the address of the parc Asterix. Accessing the disputed domain names, the Internet users would most likely consider that it is related to or associated with the Complainant and the Complainant's business.

The Complainant requests transfer of the disputed domain names.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

RIGHTS

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

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.

A. Preliminary Issue: Language of the Proceeding

Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The language of the Registration Agreement for the disputed domain names is Ukrainian. The Panel is proficient in both Ukrainian and English.

The factors that the Panel should take into consideration include whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without at the same time causing injustice to the Parties.

The Complainant, being the company registered in France, has filed the Complaint in English and requested English to be the language of this proceeding.

While applying the provision on the language of the proceeding, the Panel considers that it should ensure that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition.

While there is a language requirement in paragraph 11(a) of the Rules, the Panel must balance that against other considerations of ensuring that the proceeding takes place with due expedition and that the parties are treated fairly and given a fair opportunity to present their case. The Panel is of the view that the language requirement should not cause any undue burden on the parties or undue delay.

According to section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (WIPO Overview 3.0), this complaint falls under scenarios warranting proceeding in a language other than that of the registration agreement. For instance, (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name, particularly where it is the same as that of the complainant's mark.

It is well-known fact not requiring a proof that English is widely understood and is spoken throughout the world as an international language, including Ukraine. Therefore, it is highly likely that the relevant Respondent might understand English sufficiently to understand the content of the complaint and annexes.

Furthermore, it is a well-known fact that does not require proof that the Ukrainian language uses the Cyrillic script. However, the disputed domain names are registered in Latin letters rather than their Cyrillic alternatives, suggesting that the Respondent has knowledge of languages other than Ukrainian. In addition, the written notice sent by the Czech Arbitration Court was in both Ukrainian and English.

Although the language of the registrar is Ukrainian, the Respondent has knowledge of other languages, particularly French, as evidenced by the content of the websites related to the disputed domain names. Additionally, the fact that the disputed domain names incorporate the well-known brand of the Complainant, which consists of Latin characters, indicates the Respondent's familiarity with brands that are not of Ukrainian origin and at least some level of proficiency in English.

The Respondent raised no objection to the proceedings being conducted in English.

Based on the foregoing, the Panel concludes that it is not unfair to the Parties to proceed in English and finds it appropriate to exercise its discretion and allow the proceedings to be conducted in English.

B. Consolidation: Multiple domain names

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In this respect the Panel notes that the disputed domain names:

1) are registered by the same domain name holder residing at the same address;

2) resolve to websites that share similar content;

3) were using the Complainant's famous ASTERIX trademark in its entirety;

4) were registered on the same day – December 10, 2024.

The Respondent has not replied to the Complaint.

The Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party, and resolves the case against the Respondent with regard to both disputed domain names.

PRINCIPAL REASONS FOR THE DECISION

To succeed, in a UDRP complaint, complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

(i) the disputed domain names are 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 disputed domain names; and

(iii) the disputed domain names have been registered and are being used in bad faith.

The Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the Complaint, the Panel's decision shall be based upon the Complaint. The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions.

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See WIPO Overview 3.0, section 4.3.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview 3.0, section 1.7.

The Complainant has shown rights in respect of a trademark ASTERIX for the purposes of the Policy. WIPO Overview 3.0, section 1.2.1.

The entirety of the trademark is reproduced within the disputed domain names. The addition of the generic names "parc", letters "s", country code "fr" and hyphens in the disputed domain names does not prevent a finding of confusing similarity between the disputed domain names and the trademark under the Policy, paragraph 4(a)(i).

The new gTLDs ".fun", "online", "uno" are considered a standard registration requirement and is therefore disregarded under the first element of the confusing similarity test (see WIPO Overview 3.0, sections 1.7, 1.8, and 1.11.1). Bearing this in mind, the Panel holds that the disputed domain names are confusingly similar to the Complainant's trademark ASTERIX.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

It is well established that, as it is put in WIPO Overview 3.0, section 2.1, while the overall burden of proof in the proceedings is on the complainant, 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. Therefore, the Panel agrees with prior UDRP panels that the complainant is required to make out a prima facie case before the burden of production on this element shifts to the respondent to show that it has rights or legitimate interests in the disputed domain name.

The Complainant has made out a prima facie case showing that the Respondent has no rights or legitimate interests in the disputed domain names, notably by demonstrating rights in the ASTERIX trademark, which precede the Respondent's registration of the disputed domain names for years, and confirming that the Respondent is neither affiliated with, nor has it been licensed or permitted to use the Complainant's ASTERIX trademark or any domain names incorporating the ASTERIX trademark.

According to the case file, the Respondent is not known by the disputed domain names. The Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark, or apply for registration of the disputed domain names.

The disputed domain names redirect to a French content dedicated to the PARC ASTERIX. The Panel considers that the nature of the disputed domain names carries a risk of being perceived as potentially affiliated with the Complainant also supported by the fact that for many years the Complainant has used the ASTERIX trademark specifically in connection with its amusement park.

Consequently, the burden of production shifts to the Respondent to rebut the Complainant's prima facie case by providing relevant evidence that he or she has rights or legitimate interests in the disputed domain names. However, the Respondent has failed to file a response to prove his or her rights or legitimate interests in the disputed domain names under paragraph 4(c) of the Policy.

Bearing in mind that the Panel has not found evidence that the Respondent has been commonly known by the disputed domain names, that the Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain names

incorporating the Complainant's mark, and taking into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way, the Panel concludes that the Respondent has no trademark rights related to the disputed domain names.

The Panel finds, therefore, that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Complainant has submitted evidence that the Respondent registered the disputed domain names long after the Complainant registered its ASTERIX trademark. In particular, the Complainant has commercial use of its trademarks more than 50 years and with over 2.8 million visitors, the PARC ASTERIX is the second most visited park in France behind Disneyland Paris and the 10th (in 2022) most visited park in Europe. Given the accumulation of good will and distinctiveness of the Complainant's mark over the course of its long history, and the fact that the ASTERIX mark appears to be distinctive, it is highly unlikely that the Respondent did not know of the Complainant and its ASTERIX mark prior to the registration of the disputed domain names. Moreover, addition of the descriptive term "parc" to the Complainant's ASTERIX trademark in the disputed domain names also evidences well awareness of the Respondent about the Complainant and its business, as the Complainant has involved in the theme park business since 1989, i.e., 35 years prior to the disputed domain names were registered.

Furthermore, the Respondent's knowledge of the Complainant's ASTERIX trademark is also supported by the use of the disputed domain names, which previously resolved to the commercial websites apparently offering the services for PARC ASTERIX, which are competitive with the Complainant's services. At the same time, the websites under the disputed domain names contain no information about the Respondent, with the exception of the address of the parc Asterix. As a result, the Panel finds that the Respondent had the Complainant's trademark in mind and intentionally targeted the Complainant when it registered the disputed domain names. Accordingly, the Panel concludes that the Respondent registered and used the disputed domain names in bad faith to create a likelihood of confusion with the Complainant's trademark. Accessing the disputed domain names, the Internet users would most likely consider that it is related to or associated with the Complainant and the Complainant's business.

In addition, the disputed domain names incorporate the entirety of the Complainant's ASTERIX mark along with various additional prefixes and suffixes which the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant. Furthermore, the Panel considers that by registering the sixteen disputed domain names in this case, the Respondent has acted in bad faith pursuant to paragraph 4(b)(ii) of the Policy, which provides that bad faith is evidenced where a registrant has registered a domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct.

The Respondent did not submit a response in this proceeding. Under the circumstances of this case, this is an additional indication of the Respondent's bad faith, which was considered by the Panel.

The Panel finds the third element of the Policy has been established.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **parcasterixs-fr.fun**: Transferred
2. **parcasterix.fun**: Transferred
3. **parca-sterix.fun**: Transferred
4. **parcasterix.online**: Transferred
5. **parcasterixs.online**: Transferred
6. **parcasterix-fr.online**: Transferred
7. **fr-parcasterix.online**: Transferred
8. **fr-parcasterix.uno**: Transferred
9. **parcasterix-fr.uno**: Transferred
10. **parcasterix-fr.fun**: Transferred
11. **fr-parcasterix.fun**: Transferred
12. **parcasterixs.uno**: Transferred
13. **parcasterixs-fr.uno**: Transferred
14. **parcasterixs-fr.online**: Transferred
15. **parca-sterix.uno**: Transferred

16. **parcasterix.uno**: Transferred

PANELLISTS

Name	**Ganna Prokhorova**

DATE OF PANEL DECISION 2025-03-09

Publish the Decision