

ADMINISTRATIVE PANEL DECISION

EUROVET v. Whois Agent, Domain Protection Services, Inc. / Wteu Qtyeiw
Case No. D2022-2053

1. The Parties

The Complainant is EUROVET, France, represented by Ipside Avocat, France.

The Respondent is Whois Agent, Domain Protection Services, Inc., United States of America (“United States”) / Wteu Qtyeiw, China.

2. The Domain Name and Registrar

The disputed domain name <exposedparis.net> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2022. On June 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 10, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on June 14, 2022.

The Center verified that the Complaint, together with the amendment to the Complaint, satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 7, 2022.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on July 11, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and

Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a French corporation specialized in the organization and promotion of fairs, notably in the relation to textiles.

Since February 2017 and through “www.exposedparis.com” the Complainant has developed an online store.

The Complainant is the owner of the following trademark rights over EXPOSED:

International trademark designating the European Union and registered on July 6, 2017 with registration number 1372519.

French Trademark registered on February 24, 2017 with registration number 174340876.

The disputed domain name was registered on May 5, 2021 and currently redirects to a website where EXPOSED trademark is displayed and mimics the Complainant’s website by using its intellectual property.

The Complainant owns <exposed-paris.com>, <exposed-paris.fr>, <exposed.fr>, <exposedparis.com> and <exposedparis.fr>, all registered on 2017.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that the disputed domain name comprises EXPOSED with the addition of the geographical term “paris”. Thus, the disputed domain names incorporates the trademark in its entirety and therefore should be considered confusingly similar to its trademark for the purposes of the UDRP.

The Complainant also alleges that the mere addition of a geographical term, such as “paris”, and the relevant mark is recognizable in the disputed domain name, would not prevent a finding of confusing similarity.

The suffix “.net” is a generic Top-Level Domain (“gTLD”) which is without legal significance to render a domain name dissimilar.

With regard to the second element of the UDRP, the Complainant states that the Respondent has not received any license or consent to use EXPOSED in a domain name or in any other manner. Nor the Complainant has given authorization the Respondent to register the disputed domain name. Neither the Respondent is known by EXPOSED.

The Complainant alleges that to the best of his knowledge, the Respondent is not engaged in a personal or business activity that may arise any rights or legitimate interests in the disputed domain name.

Further, the disputed domain name effectively impersonates the Complainant or suggest sponsorship or endorsement while that is not the case. Indeed, the website to which the disputed domain name redirects replicates the Complainant’s website in content, images and items to be sold.

The Complainant also notes that the products displayed in the Respondent’s website are unavailable. Therefore, the Respondent is disrupting Complainant’s activities in attempt to use the disputed domain name against Complainant’s interests.

Finally, and in respect to the third requirement, the Complainant supports a finding of bad faith registration and use. Effectively, the Complainant believes that the Respondent had the Complainant's EXPOSED trademark in mind when registering the disputed domain name. Such finding is supported by the later use in the website to which the disputed domain name redirects where the impersonation of the Complainant and the use of the EXPOSED trademark is apparent.

The Complainant notes that this website lacks any legal notice, reproduces the Complainant's domain name but with a different gTLD "net", uses the Complainant's EXPOSED trademark, reproduces images and content belonging to the Complainant and uses the same typography. As well, the Respondent's site pretends to sell the same products at a reduced price.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

A. Identical or Confusingly Similar

Once the Complainant has showed trademark rights, the first element of the Policy consists in a straightforward comparison between the complainant's trademark and the disputed domain name. See Section 1.7 WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The disputed domain name incorporates the Complainant's EXPOSED trademark in its entirety so, it is clearly recognizable in the disputed domain name <exposedparis.net>. The mere addition of a geographical term does not prevent a finding of confusingly similarity under this first element. See *Allianz SE v. IP Legal, Allianz Bank Limited*, WIPO Case No. [D2017-0287](#).

The Panel also notes that gTLDs are generally irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name.

Accordingly, the first requirement is met under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

While the burden of proof in UDRP proceedings rests on the complainant, panels have recognized that proving a respondent lack of rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative". Being most evidence in the respondent's hands, it is well admitted that where a complaint makes out a *prima facie* case that the respondent lacks rights or legitimate interests the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has established registered trademarks rights, how the Respondent lack in license or consent to use the trademark in a corresponding domain name and, has pointed out the lack of authorization to register the disputed domain name. Further, the Complainant has stated that the Respondent is not known by EXPOSED and neither the Respondent is engaged in personal or business activity which may arose rights or legitimate interest in the disputed domain name.

However, the Complainant's most fundamental arguments are as follows. On one side, the composition of the disputed domain name cannot constitute fair use when it effectively impersonates the Complainant or suggests sponsorship or endorsement by the Complainant.

Besides, the Complainant provides evidence that the website to which the disputed domain directs is somehow a copy paste of its own website. Thus, content and images of the items as well as the logo of the trademark are illegally reproduced. Then, concludes, such use cannot be a *bona fide* offering.

In the Panel's opinion, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interest in the disputed domain name.

Additionally, while the Panel notes that the term "exposed" is a dictionary term, the Panel notes that the disputed domain name is not used in connection with a dictionary meaning but targeting the Complainant itself and its activities.

The Panel observes that the Respondent did not file a response to rebut Complainant's allegations and evidence. Moreover, having carefully read the file, the Panel did not find any legitimate interest in the disputed domain name but to take advantage of the Complainant's trademark. In particular, there is no evidence to conclude that the Respondent is a proper reseller since the checkout process is impossible to fulfill. In addition, the Panel notes that even if the Respondent was to be a reseller, the Panel finds that the composition of the disputed domain name, its similarity with the Complainant's trademark and domain names, and the use of the disputed domain name carry an impermissible risk of implied affiliation.

Therefore, the Complainant has met the second element under paragraph 4(a)(ii) of the Policy to the satisfaction of the Panel.

C. Registered and Used in Bad Faith

The Panel notes that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See [WIPO Overview 3.0](#) section 3.1.

The Panel notes the Complainant's widespread use of the <exposedparis.com> or <exposedparis.fr> in connection to its activity and business. The Panel is of the opinion that the similarity between the disputed

domain name and the EXPOSED trademark may suggest that the disputed domain name resolves or to the Complainant's official website, or at least is affiliated with the Complainant.

On balance, the Respondent knew or should have known the Complainant and its trademarks at the moment of the registration of the disputed domain name. This finding is based on the reproduction of the Complainant's mark in the disputed domain name, the identical composition of the disputed domain name and the Complainant's domain name in business except the gTLD, and the reproduction of intellectual property material by the Respondent in his website.

Accordingly, the Panel concludes that the Respondent had clear and previous knowledge of EXPOSED. Remarkably would it be if someone register a domain name to redirect it to a website with the same content as to a third-party site without previous knowledge of the latter. Accordingly and on balance the Respondent had previous knowledge of the Complainant and its marks.

While the Respondent attempts to impersonate the Complainant, the use of the disputed domain name fits with the circumstances described in 4 b (iv) of the Policy: "By using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location". Furthermore, the Respondent purport to sell Complainant's products with a reduced price in comparison to the official ones. Seemingly, the checkout process is not possible but the Respondent seems to gather personal information from consumers. The Panel finds that this is not a *bona fide* offering of goods and the *mise-en-scène* is clearly disruptive for the Complainant.

Likewise, the use of intellectual property such as photos, content, and logo without authorization by the Complainant further supports a finding of bad faith for the purposes of this requirement. See *Fenix International Limited v. Super Privacy Service LTD / Jamiur Bin Nasir*, WIPO Case No. [D2021-3315](#).

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <exposedparis.net> be transferred to the Complainant

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: July 25, 2022