

## **ADMINISTRATIVE PANEL DECISION**

France Télévisions v. Jiri Capcuch

Case No. D2023-1503

### **1. The Parties**

The Complainant is France Télévisions, France, represented by Dreyfus & associés, France.

The Respondent is Jiri Capcuch, Czech Republic.

### **2. The Domain Name and Registrar**

The disputed domain name <france2replay.com> is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2023. On April 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 6, 2023, 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 (Dynadot Privacy Service) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 24, 2023 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 amended Complaint on April 27, 2023.

The Center verified that the Complaint together with the amended 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 April 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 28, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on June 30, 2023. 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**

According to information in the Complaint, the Complainant is the French public national television broadcaster. It is owned by the state and it owns other subsidiary companies such as France 2 (formerly Antenne 2) and France 3 (formerly France Régions 3), later joined by the legally independent channels France 4 (formerly Festival), and France Five (formerly La Cinquième). The Complainant owns several television channels for a national, overseas, and international audience.

The Complainant is the owner of several trademarks consisting of FRANCE 2, such as the French trademark no. 3822100 registered on April 8, 2011, or the European Union Trade Mark no. 000684704 registered on October 30, 2000. The Complainant also owns many domain names that include its trademark FRANCE 2, such as the domain name <france2.com> registered on March 28, 2001, or <france2replay.fr>, registered on July 16, 2014.

The disputed domain name was registered on October 28, 2022, and resolves to a parking page with pay-per-click (“PPC”) advertising links which appear to offer goods and services that are in competition with the services of the Complainant.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant argues that the disputed domain name is identical or at least confusingly similar to the Complainant’s trademark FRANCE 2, as the disputed domain name substantially reproduces the Complainant’s trademark in its entirety in addition to the term “replay” directly targeting the Complainant’s field of activity. The likelihood of confusion between the disputed domain name and the Complainant’s trademark is enhanced as the term “replay” corresponds to the Complainant’s field of activity and the possibility to watch live or replay its programs on its websites.

As regards the second element, the Complainant argues that the Respondent is not affiliated with the Complainant in any way nor has he been authorized by the Complainant to use and register its trademarks, or to seek registration of any domain name incorporating said trademarks. The disputed domain name resolves to a parking page displaying various commercial links related to the Complainant’s field of activity. Consequently, there is no indication that the Respondent is using, or intending to use, the disputed domain name, in a legitimate, noncommercial or fair use manner. The Respondent never replied to the cease-and-desist letter sent by the Complainant despite several reminders. Also, it seems that the Respondent registered the disputed domain name with a privacy shield service to hide his identity and prevent the Complainant from contacting him. Furthermore, an email server has been configured on the disputed domain name and thus, there might be a risk that the Respondent is engaged in a phishing scheme.

With respect to the third element, the Complainant argues that it is implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name, as the Complainant is one of the main television operators in France and it also broadcasts in other countries in the world. Also, the disputed domain name entirely reproduces the Complainant’s trademark FRANCE 2 associated with the term “replay”, and is also very similar to the Complainant’s official domain name. The Respondent uses the disputed domain name to direct Internet users to a webpage displaying commercial links related to movies and video streaming, directly targeting the Complainant’s field of activity, which is proof of bad faith. Also, an email server has been configured on the disputed domain name and thus, there might be a risk that the Respondent is engaged in a phishing scheme. Lastly, the Respondent is a well-known cyber-squatter that has been the subject of several UDRP proceedings.

##### **B. Respondent**

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

## 6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

### A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to that trademark. This first element under the Policy functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7.

The Complainant has provided evidence of its rights in the FRANCE 2 trademark by providing evidence of its trademark registrations.

As regards the second limb of the first element, the test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name. It is well established that the generic Top-Level Domain (“gTLD”) may be ignored when assessing the confusing similarity between the disputed domain name and the Complainant’s trademarks as they are viewed as a standard registration requirement. See section 1.11.1 of the [WIPO Overview 3.0](#).

The trademark FRANCE 2 is reproduced in its entirety in the disputed domain name. The addition of “replay” does not prevent a finding of confusing similarity with the Complainant’s trademark, which is recognizable in the disputed domain name. The fact that a domain name wholly incorporates a complainant’s trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such marks. The addition of an additional term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

The Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

### 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 name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established that it holds rights over the FRANCE 2 trademark and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide*

offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Rather, according to the unrebutted evidence put forward by the Complainant, at the date of the Complaint the disputed domain name was used to host a parked page comprising PPC links to competing services. According to section 2.9 of the [WIPO Overview 3.0](#), “Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users”. In this case, the PPC links are related to the Complainant’s trademark FRANCE 2 and generate search results with competing services to those offered by the Complainant. In this Panel’s view, such use does not confer rights or legitimate interests to the Respondent.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has failed to bring evidence to the contrary. Furthermore, the disputed domain name carries a risk of implied affiliation as it incorporates the Complainant’s trademark in addition to “replay”, and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)).

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

### **C. Registered and Used in Bad Faith**

To fulfill the third requirement of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

According to the unrebutted assertions of the Complainant, its FRANCE 2 trademarks were widely used in commerce well before the registration of the disputed domain name and are reputed. The Respondent provided no explanations for why he registered the disputed domain name. It is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant’s trademarks, and to target those trademarks.

The disputed domain name is used by the Respondent to direct to a website displaying PPC advertisements for services related to the Complainant’s services. Given the confusing similarity between the Complainant’s trademark and the disputed domain name, noting also the similarity between the disputed domain name and the Complainant’s domain name <france2replay.fr>, Internet users would likely be confused into believing that the Complainant is affiliated with the website to which the disputed domain name resolves. Presumably, the Respondent intends to benefit from the confusion created: it is likely that the Respondent earns income when Internet users click on the links in search of the Complainant’s services.

Also, there appears to be a pattern of abusive registrations by the Respondent, as the unrebutted evidence in the case file shows that the Respondent was involved in previous UDRP proceeding where similar factual situations caused the concerned UDRP panels to decide in favor of the complainant (See *Mav Media, LLC v. Jiri Capcuch and Wu Yu*, WIPO Case No. [D2022-3803](#)). This fact also supports a finding grounded on paragraph 4(b)(ii) of the Policy, referring to a respondent registering “the 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 you have engaged in a pattern of such conduct”.

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant’s contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible. An additional element is the DNS setup of the disputed domain name (with active MX records). Considering all the above, it is not possible to conceive any plausible actual or contemplated good faith registration and use of the disputed domain name by the Respondent.

Based on the evidence and circumstances of this case, the Panel concludes that the disputed domain name was registered and used in bad faith and that the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

## **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, <france2replay.com>, be transferred to the Complainant.

*/Mihaela Maravela*

**Mihaela Maravela**

Sole Panelist

Date: July 14, 2023