

ADMINISTRATIVE PANEL DECISION

Crédit Foncier de France v. Domains By Proxy, LLC / Domain Admin,
FindYourDomain.com
Case No. D2022-0047

1. The Parties

The Complainant is Crédit Foncier de France, France, represented by DBK - Société d'avocats, France.

The Respondent is Domains By Proxy, LLC, United States of America ("United States") / Domain Admin, FindYourDomain.com, United States.

2. The Domain Name and Registrar

The disputed domain name <enterial.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 6, 2022. On January 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 7, 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 January 13, 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 amended Complaint on January 31, 2022.

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 February 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 24, 2022. After the notification of Default, the Respondent sent an email offering to settle the dispute on February 24, 2022. No settlement was reached between the Parties.

The Center appointed Andrew Brown Q.C. as the sole panelist in this matter on March 14, 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 national mortgage bank created in France in 1852. It is a wholly-owned subsidiary of Groupe BPCE, one of the largest banking groups in France. BPCE is present in more than 40 countries via its various subsidiaries.

The Complainant has served its clients' real estate needs for more than 167 years. It is the owner of the following trademarks:

Trademark	No	Country	Class	Date
ENTENIAL	734199	France	35, 36, 37 and 42	April 25, 2000

The disputed domain name was registered on July 18, 2021. The disputed domain resolves to a third-party website auctioning the domain name registration.

5. Parties' Contentions

A. Complainant

The Complainant claims rights in the ENTENIAL trademark. It contends that the disputed domain name reproduces identically its ENTENIAL trademark and that this is sufficient to establish confusing identity.

The Complainant states that the addition of the generic top-level domain ".com" is not to be taken into account in assessing the likelihood of confusion and indeed is to be generally disregarded in such comparisons.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name. It states that it has never authorized the Respondent to register and/or use any domain name containing the ENTENIAL trademark. Nor has it granted any license or authorization to the Respondent to use the ENTENIAL trademark including as a domain name.

As to registration and use in bad faith, the Complainant states that the Respondent acquired the disputed domain name primarily for the purpose of selling, renting or otherwise transferring it. The Complainant points to the fact that the website linked to the disputed domain name is a third party website auctioning the disputed domain name and offering it for sale for USD 6,899. The Complainant asserts that this constitutes bad faith registration and use.

The Complainant asserts that there is bad faith on the part of the Respondent because it has hidden its identity. Further the Complainant relies on a pattern of bad faith registrations by the Respondent.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, a Complainant must prove each of the following elements with respect to the disputed domain name in order to succeed in this proceeding:

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

A. Identical or Confusingly Similar

The Complainant has provided evidence of its registration of its ENTENIAL trademark in France. It is the Panel's view that the Complainant has clearly and sufficiently demonstrated its rights in the ENTENIAL trademark.

The Panel finds that the disputed domain name is identical to the Complainant's ENTENIAL trademark and finds in favor of the Complainant on paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish that it has rights or legitimate interests in the disputed domain name, among other circumstances, by showing any one of the following elements:

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

The overall burden of proof for establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name lies with the Complainant.

There is no evidence of the existence of any rights or legitimate interests on the part of the Respondent in the ENTENIAL trademark pursuant to paragraph 4(c) of the Policy. The Complainant has shown prior rights to the ENTENIAL trademark and those rights precede the Respondent's registration of the disputed domain name by some 20 years. Further, the Complainant has shown that it has not granted any license or authorization to the Respondent allowing it to use the ENTENIAL trademark.

The Panel is satisfied that the Respondent is not making a legitimate, non-commercial or fair use of the disputed domain name. The Respondent had the opportunity to demonstrate its rights or legitimate interests, but it chose not to reply to the complaint.

The Panel therefore finds that the Complainant has satisfied the burden of establishing a *prima facie* case that the Respondent had no rights or legitimate interests in the disputed domain name and accordingly finds that paragraph 4(a)(ii) of the Policy is satisfied in favor of the Complainant.

C. Registered and Used in Bad Faith

The Panel is also satisfied that the disputed domain name has been registered in bad faith for the following reason.

Paragraph 2 of the UDRP puts a burden on registrants where it states “by applying to a register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and bond to us that [...] to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of a third party [...]. It is your responsibility to determine whether your domain name infringes or violates someone else’s rights.

Even the most cursory trademark or other online search for any online search of existing domain names prior to the Respondent registering the disputed domain name would have instantly revealed the Complainant and its ENTENIAL Mark. See in this regard section 3.2.3 of the [WIPO Overview 3.0](#). The Complainant’s ENTENIAL trademark is a distinctive one. The Panel therefore draws adverse inferences from the failure of the Respondent to reply to this complaint.

The Panel is also satisfied that the disputed domain name has been used in bad faith.

The Complainant has provided evidence that the Respondent has offered the disputed domain name for sale at a price of USD 6,899 which is well in excess of any out-of-pocket costs that the Respondent could have incurred directly related to the disputed domain name. Given all these facts and that the Respondent was given the opportunity to reply to the complaint but did not, the Panel finds that the Respondent’s actions constituted registration in bad faith under paragraph 4(a)(iii) of the Policy.

The Panel also accepts the Complainant’s submission based on the decision in *ECCO Sko A/S v. Protected Domain Services Customer ID: NCR-2448048 / jizhiteam*, WIPO Case No. [D2010-1113](#) that the Respondent’s hiding of its identity is evidence of bad faith and that the Respondent’s subsequent use of the disputed domain name is tainted by that bad faith.

The Complainant has also relied on the fact that the Respondent has previously been the subject of a bad faith finding in *Enel S.p.A. v Registration Private, Domains by Proxy, LLC / Domain Admin, FindYourDomain.com / Domain Administrator*, Diamond Point Enterprises, WIPO Case No. [D2021-2404](#). It is claimed that there has been a pattern of bad faith registrations by the Respondent.

The Panel is reluctant to find a pattern where there is just one previous instance. Accordingly, it does not rely on this factor. However, the fact that this case is a second instance where a bad faith complaint has been upheld may well lead to such a finding of a pattern if there were to be any further instances.

For the reasons given above, the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied in favor of the Complainant.

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, <entential.com> be transferred to the Complainant.

/Andrew Brown Q.C./
Andrew Brown Q.C.
Sole Panelist
Date: March 28, 2022