

ADMINISTRATIVE PANEL DECISION

La Croissanterie v. Registration Private, Domains By Proxy, LLC / Ioannis Papadopoulos, Foodtales Ltd
Case No. D2022-2339

1. The Parties

The Complainant is La Croissanterie, France, represented by Ipside, France.

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America / Ioannis Papadopoulos, Foodtales Ltd, Cyprus.

2. The Domain Name and Registrar

The disputed domain name <lacroissanterie-fr.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 June 28, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 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 July 5, 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 July 8, 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 July 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 31, 2022. The Respondent sent an email communication to the Center on July 6, 2022, but did not submit a formal response. On August 2, 2022, the Center informed the parties that it will proceed to panel appointment.

The Center appointed Gareth Dickson as the sole panelist in this matter on August 8, 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 operates a chain of over 200 cafés and restaurants and is based in France.

The Complainant is the owner of European Union Trade Mark registration number 013009543 for word mark LA CROISSANTERIE, which was registered on November 11, 2014 (the “Mark”).

The disputed domain name was registered on March 3, 2022. According to the evidence submitted with the Complaint, it directed Internet users to a webpage promoting café and restaurant activities which are identical to those of the Complainant, including references to “the ‘La croissanterie’ chain” and inviting visitors to explore “La Croissanterie Franchising” (the “Website”).

5. Parties’ Contentions

A. Complainant

The Complainant argues that it has rights in the Mark by virtue of its ownership of various trade mark registrations for the Mark around the world. It contends that the disputed domain name is confusingly similar to the Mark since it incorporates the Mark (which is recognisable within the disputed domain name) in its entirety with the addition of a hyphen and the letters “fr”, which it says will be understood by visitors to the Website to be a reference to the country code for France where the Complainant conducts its business and has its reputation and goodwill, under the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant contends that the disputed domain name was registered by the Respondent without its permission and that the Respondent is not a licensee of the Complainant. It alleges that the Respondent has been using the disputed domain name to obtain an unfair commercial gain, by misleadingly diverting customers to the Website.

The Complainant submits that there is no evidence to suggest that the Respondent: has been commonly known by the disputed domain name; is making, or intends to make, a legitimate noncommercial or fair use of it (the services offered on the Respondent’s website, accessible via the disputed domain name, having been commercial in nature) or has ever used or demonstrated preparations to use it in connection with a *bona fide* offering of goods or services.

The Complainant submits that the Respondent must have known of the Complainant and the Mark when it registered the disputed domain name and therefore registered the disputed domain name and is using it in bad faith. The Mark, according to the Complainant, is well-known, with all of the top Google searches pointing to the Complainant’s business.

The Respondent’s own use of the disputed domain name to offer goods identical to those offered by the Complainant further confirms that the Respondent knew of the Mark, and the Complainant’s interest in it, when it registered the disputed domain name and that it registered it in bad faith.

Furthermore, two other domain names, <lacroissanterie.com.cy> and <lacroissanterie.cy>, have since been cancelled following successful complaints to the responsible registry having been filed by the Complainant. The Complainant contends that the registrant of these domain names has the same postal address as the registrant of the disputed domain name, and notes similarities between other contact details used for these three registrations, each of which incorporates the Mark. Given these similarities, the Complainant argues that the same person is likely to be involved in the disputed domain name and an inference as to bad faith

can legitimately be drawn.

Together, the Complainant submits that the Respondent is using the disputed domain name in bad faith.

B. Respondent

The Respondent did not reply substantively to the Complainant's contentions but did send an email to the Center on July 6, 2022 seeking to change the contact details for the disputed domain name. The Center acknowledged receipt of this email. No further response was received from the Respondent.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- a) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) the disputed domain name has been registered and is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Mark.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)") provides that: "[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

Section 1.8 of the [WIPO Overview 3.0](#) further provides that: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

The Panel therefore finds that the disputed domain name is confusingly similar to the Mark, since the disputed domain name incorporates the Mark in its entirety. The addition of a hyphen and the letters "fr", which the Panel accepts will be perceived to be a geographical term referring to France (where the Complainant conducts its business), in the disputed domain name does not prevent a finding of confusing similarity, nor does the addition of the gTLD ".com".

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied

the second element.

In the current proceeding, the Complainant has established its *prima facie* case. The evidence before the Panel is that the Mark is neither generic nor descriptive but enjoys a degree of inherent distinctiveness and longevity of use that makes a coincidental adoption by the Respondent highly unlikely. Certainly, there is no evidence before the Panel to rebut the Complainant's contentions in this regard. Furthermore, the Complainant states, without rebuttal from the Respondent, that it has not given the Respondent permission to use the Mark, in a domain name or otherwise, and submits that the Respondent has not been commonly known by the disputed domain name.

There is no evidence that the Respondent has acquired any common law rights to use the Mark, is commonly known by the Mark or has chosen to use the Mark in the disputed domain name in any descriptive manner or is making any use of the disputed domain name that would establish rights or legitimate interests as a result of a noncommercial or fair use of it.

By not replying to the Complainant's contentions, the Respondent has failed to refute the Complainant's *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), "a panel's assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed".

Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel notes that the Mark has already been found by previous panels administering domain name complaints in a manner similar to the Policy to be distinctive and to have a reputation, rather than being a descriptive or generic term.

The Panel also notes that the disputed domain name was registered eight years after the Mark was registered and accepts that the disputed domain name was chosen by reference to the Mark.

As a result, and in the absence of evidence from the Respondent that the similarity of the disputed domain name to the Mark is coincidental, the Panel must conclude that the Respondent knew of the Complainant's rights in the Mark when it registered the disputed domain name and indeed registered it because of that similarity.

The Panel therefore finds that the Respondent's registration of the disputed domain name was in bad faith since it attempted to appropriate for the Respondent, without the consent or authorisation of the Complainant, rights in the Complainant's Mark.

The disputed domain name is also being used in bad faith by being used for a commercial purpose that involves freeriding on the Complainant's reputation and goodwill in the Mark.

Furthermore, while the existence of two other domain name proceedings having been won against, probably the same, Respondent does not create a presumption of bad faith *per se*, it does tend to support such a finding of bad faith where the Respondent has not taken any steps to rebut it.

Therefore, and on the basis of the information available to it, the Panel finds that the Respondent's use of the disputed domain name is without justification and is inconsistent with the Complainant's exclusive rights in the Mark. Consideration of these and other factors militates in favour of a finding of bad faith.

The Panel finds that the Respondent has registered and is using the disputed domain name in bad faith.

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 <lacroissanterie-fr.com> be transferred to the Complainant.

/Gareth Dickson/

Gareth Dickson

Sole Panelist

Date: August 22, 2022