

ADMINISTRATIVE PANEL DECISION

Christian Huon, Alexandre Rata, :-) CHEEEEESE SARL v. Registration Private, Domains By Proxy, LLC / Evaristo Castro Garcia
Case No. D2022-2725

1. The Parties

The Complainants are Christian Huon (“Mr Huon”), Alexandre Rata (“Mr Rata”) and :-) CHEEEEESE SARL (“CHEEEEESE SARL”), France, represented by Squair, France.

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America / Evaristo Castro Garcia, Spain.

2. The Domain Name and Registrar

The disputed domain name <cheeeeese.info> (the “Disputed Domain Name”) 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 July 26, 2022. On July 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 26, 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 Complainants on July 28, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on August 1, 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 August 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 24, 2022.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on September 7, 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

CHEEEEESE SARL was founded with the corporate name of “:-) CHEEEEESE” on August 26, 2003. CHEEEEESE SARL is a global design agency which engages in packaging, merchandising, brand identity, 3D, publishing, creation, design, POS, branding, digital, web-design and visual communication businesses. Mr Huon is the director of CHEEEEESE SARL. Mr Huon and Mr Rata are both beneficial owners of CHEEEEESE SARL.¹

Mr Huon, Mr Rata and a Ms Séverine Djian own French Trademark Registration No. 3048749 for  registered on August 29, 2000. CHEEEEESE SARL has obtained the exclusive right to use the French trademark through a license agreement dated August 29, 2000. Mr Huon and Mr Rata own International Trademark Registration No. 864039 for  designating China, Switzerland, and Spain registered on December 13, 2004 (together with French Trademark Registration No. 3048749, collectively, the “Complainants’ Trademark”). The Complainants’ Trademark is also represented in the domain names <cheeeeese.com> and <cheeeeese.fr> that resolve to the Complainants’ website.

The Disputed Domain Name was registered by the Respondent using the anonymous registration services of Registration Private, Domains By Proxy, LLC on October 14, 2014, more than 10 years after the Complainants’ Trademarks were first registered. The Disputed Domain Name previously resolved to the Complainants’ website, though it is now inactive.

5. Parties’ Contentions

A. Complainants

(a) The Disputed Domain Name is identical or confusingly similar to the Complainants’ Trademark. The Complainants’ Trademark is reproduced in its entirety in the Disputed Domain Name by virtue of the inclusion of the word “cheeeeese”, which has 5 “e”s in a row.

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Complainants have never authorized or given permission to the Respondent, who is not associated with the Complainants in any way, to use the Complainants’ Trademark to register the Disputed Domain Name. There is no evidence of the Respondent’s use of or 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, nor a legitimate noncommercial or fair use of the Complainants’ Trademark. There is also no evidence that the Respondent is known under the Disputed Domain Name.

(c) The Respondent’s registration of the Disputed Domain Name which is confusingly similar to the Complainants’ Trademark is in itself an act of bad faith by someone with no legal connection to the Complainants’ business. Moreover, given that the Disputed Domain Name redirects to the Complainants’ website, the Respondent must have been fully aware of the existence of the Complainants and the Complainants’ Trademark. Therefore, given these factors, the Respondent has registered and is using the Disputed Domain Name in bad faith.

¹ In light of the common interest and grievance shared by the Complainants, the Panel accepts the single consolidated Complaint against the Respondent.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainants are required to prove each of the following three elements:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and
- (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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainants have rights in the Complainants' Trademark based on various trademark registrations listed above in Section 4.

It is well established that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the generic Top-Level Domain ("gTLD") extension, ".info" in this case, may be disregarded. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Disputed Domain Name incorporates the distinctive portion of the Complainants' Trademark in its entirety. UDRP panels have consistently found that a domain name that wholly and only incorporates a complainant's trademark is identical or confusingly similar to the complainant's trademark (see *Societe Air France v Indra Armansyah*, WIPO Case No [D2016-2027](#); and *Icebug AB v. Domain Administrator*, WIPO Case No. [D2013-1823](#)).

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainants' Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Panel accepts that the Complainants have not authorized the Respondent to use the Complainants' Trademark. There is no relationship between the Complainants and the Respondent which would otherwise entitle the Respondent to use the Complainants' Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainants and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

The Respondent did not submit a Response. The fact that the Respondent did not submit a formal Response does not automatically result in a decision in favor of the Complainants. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from

the Complainants as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

- (i) Before any notice to him of the dispute, the Respondent's use of, or 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) The Respondent has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate noncommercial 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.

There is no evidence to suggest that the Respondent's use of or 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. The Panel agrees with the Complainants that the Respondent's use of the Disputed Domain Name cannot be regarded as legitimate noncommercial or fair use. In this regard, the Panel also notes the nature of the Disputed Domain Name, identically reproducing the textual element of the Complainants' Trademark and previously redirecting to the Complainant's genuine ".com" website, carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

In addition, no evidence has been provided to prove that the Respondent has trademark rights corresponding to the Disputed Domain Name or that the Respondent has become known by the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainants have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the following factors support a finding that the Disputed Domain Name was registered and is being used by the Respondent in bad faith:

- (i) The confusing similarity between the Disputed Domain Name and the distinctive portion of the Complainants' Trademark, coupled with the fact that the Disputed Domain Name redirected to the Complainants' website demonstrates that the Respondent must have been aware of the Complainants' rights in the Complainants' Trademark;
- (ii) The Respondent failed to respond to the Complainants' contentions and has provided no evidence of actual or contemplated good faith use by it of the Disputed Domain Name;
- (iii) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that the Disputed Domain Name contains the textual and dominant element of Complainants' Trademark in its entirety. The Respondent has not demonstrated any attempt to make legitimate use of the Disputed Domain Name and the website to which it resolves, which evidences a lack of rights or legitimate interests in the Disputed Domain Name, as confirmed by past panels (see *Washington Mutual, Inc., v. Ashley Khong*, WIPO Case No. [D2005-0740](#)); and,
- (iv) The Respondent used a privacy service to hide its details, further supporting an inference of bad faith registration and use. See section 3.6 of the [WIPO Overview 3.0](#).

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been 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 <cheeeeese.info> be transferred to CHEEEEESE SARL.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: September 21, 2022