

ADMINISTRATIVE PANEL DECISION

SP Holding v. Name Redacted

Case No. D2023-0843

1. The Parties

The Complainant is SP Holding, France, represented by Nameshield, France.

The Respondent is Name Redacted.¹

2. The Domain Name and Registrar

The disputed domain name <stephanplazaimmobilier.com> is registered with Cronon GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 24, 2023. On February 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 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 (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 8, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On March 8, 2023, the Center transmitted an email in English and German to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on March 9, 2023. The Respondent did not comment on the language of the proceeding. The Complainant filed an amended Complaint on March 9, 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

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

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 March 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2023. On March 20 and 24, 2023, a third party contacted the Center regarding the claimed unauthorized use of its identity in relation to the disputed domain name.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on April 14, 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

The Complainant is a network of real estate agencies branded as STEPHANE PLAZA IMMOBILIER.

The Complainant holds various trademark registrations, *inter alia*:

- International Registration STEPHANE PLAZA, registration number 1365385, registered since June 29, 2017;
- French trademark STEPHANE PLAZA IMMOBILIER, registration number 4020283, registered since July 8, 2013;
- French trademark STEPHANE PLAZA IMMOBILIER (device), registration number 4243682, registered since January 26, 2016;
- French trademark STEPHANE PLAZA IMMOBILIER (device), registration number 4243683, registered since January 26, 2016;
- French trademark STEPHANE PLAZA IMMOBILIER (device), registration number 4243685, registered since January 26, 2016.

The registrations have been duly renewed and are still valid. They will jointly be referred to in singular as the “Trademark”.

The Complainant communicates online through various domain names, such as the domain name <stephaneplazaimmobilier.com>, registered since April 8, 2011.

The disputed domain name was registered on February 14, 2023, and resolves to a parking page. Besides MX servers are configured.

5. Parties’ Contentions

A. Complainant

The Complainant holds that the disputed domain name is confusingly similar to the Trademark. The misspelling in the domain name (the omission of the letter “e” at the end of “stephane”) is not sufficient to escape the finding that the domain name is confusingly similar to the Complainant’s Trademark.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

The Complainant contends that the Respondent is not affiliated with nor authorized by SP HOLDING in any way, has no rights or legitimate interests in respect of the disputed domain name, and is not related in any way to its business. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's Trademark or apply for registration of the disputed domain name by the Complainant.

Furthermore, the Complainant also claims that the disputed domain name is a typo squatted version of the Trademark. Typo squatting can evidence that a respondent lacks rights and legitimate interests in the domain name.

Besides, the disputed domain name resolves to a parking page. The Complainant contends that the Respondent did not use the disputed domain name, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name.

Therefore, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant has established a strong reputation while using the Trademark. All the Google-search results for the denomination "stephanplazaimmobilier" are related to the Complainant. Given the distinctiveness of the Complainant's Trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's Trademark. Moreover, the Complainant states that the misspelling in the disputed domain name was intentionally designed to be confusingly similar with the Complainant's Trademark.

The disputed domain name resolves to a parking page. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

The disputed domain name has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose.

On those facts, the Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

A third party whose name matched that of the disclosed Respondent informed the Center on March 20 and 24, 2023, that his email account had been hacked and that he was not the one who registered the disputed domain name. He further mentioned that the email addresses listed in the contact details of disputed domain name were not his. Attached to this message was a confirmation banning the third party's access to his own domain names, seemingly due to the above-mentioned hack.

A formal Response to the Complaint was not received.

6. Discussion and Findings

A. Preliminary Matter – Identity of the Respondent

The evidence on record supports a finding that it is more likely than not that the Respondent used the name

and contact details of a third party without the third party's knowledge or permission to register and make use of the disputed domain name, and that the disclosed Respondent, being the victim of an identity fraud case, in fact has nothing to do with the disputed domain name. In light of the potential identity theft, the Panel has redacted the disclosed Respondent's name from the decision.

The term "Respondent" will be used for the actual registrant of the disputed domain name and not the third party victim of identity fraud.

B. Preliminary Matter – Language of the Proceeding

The Complaint was submitted in English, requesting English to be the language of proceedings.

The Complainant's argument for the language of proceedings to be English was that it would have to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings.

No reply by the Respondent was received regarding the language of proceedings.

Pursuant to paragraph 11 of the UDRP Rules, unless otherwise agreed by the parties, the default language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise. The language of the registration agreement is German.

Noting the aim of conducting the proceeding with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceeding in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

First, the Panel observed that the Respondent did not reply to the Center's request regarding the language of proceedings. Since it had been clearly announced therein that the proceeding would continue in English if the Respondent did not object, the Panel assumes that the Respondent has no objection to the proceeding being conducted in English.

The Panel further considers that translating the documents would not only result in supplementary costs for the Complainant, but also significantly delay the proceeding.

Due to the circumstances of the case, the Panel considers more appropriate for English to be the language of the proceeding and to render this decision in English.

C. General

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has 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 in bad faith.

D. Identical or Confusingly Similar

The Complainant has established that it is the owner of the Trademark. The registrations of the Trademark predate the registration of the disputed domain name.

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element ((see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9).

The disputed domain name consists of a clear misspelling of the Complainant's STEPHANE PLAZA IMMOBILIER mark, merely omitting the "e" from the STEPHANE element of the Complainant's mark.

The generic Top-Level Domain ".com" is a standard registration requirement and does not prevent the disputed domain name from being confusingly similar to the Trademark.

The Panel therefore finds that the disputed domain name is confusingly similar to the Trademark.

The Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

E. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a disputed domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant 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 disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see [WIPO Overview 3.0](#), section 2.1.).

In the Panel's opinion, the Complainant's submissions set out above under 5.A give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Respondent did not formally contest the Complainant's allegations. However, a third party contacted the Center demonstrating that the Respondent used its name and contact details for purposes of registering the disputed domain name. Evidently, such fraudulent conduct on part of the Respondent demonstrates its lack of rights or legitimate interests in the disputed domain name and suggests that the Respondent had no *bona fide* intention behind the use of the disputed domain name other than to mislead unsuspecting Internet users unaware of the slight misspelling in the disputed domain name as compared to the Complainant's mark.

In the absence of any evidence rebutting the Complainant's *prima facie* case indicating the Respondent's lack of rights or legitimate interests in respect of the disputed domain name, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

F. Registered and Used in Bad Faith

Given that the disputed domain name consists of a misspelling of the Trademark (*i.e.* typosquatting), the Respondent was more likely than not aware of the Complainant's Trademark at the time of the registration of the disputed domain name. (See Section 3.1.4 of the [WIPO Overview 3.0](#) that states that "the mere registration of a domain name that is identical or confusingly similar (particularly domain name comprising

typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith".)

The disputed domain name is also ideally suited to misleading the public. The composition of the disputed domain name suggests that the disputed domain name redirects to a website of the Complainant. The Respondent has sought to create a misleading impression of association with the Complainant.

Moreover, it is common knowledge that owners of websites customarily use email addresses containing the domain name of a website in electronic mail communications. The use of a domain name that presents a likelihood of confusion with a trademark in emails that do not originate with the trademark owner presents a risk to the reputation of a trademark and its owner. *Applied Materials, Inc. v. Proxy Protection LLC / John Smith*, WIPO Case No. [D2022-0026](#). Even if the Complainant has not provided any evidence of impersonation, the Respondent has not rebutted that it engages in this practice, which is noteworthy given the configuration of MX records for the disputed domain name. Therefore in the circumstances of this case having an MX record with this disputed domain name should already be considered a bad faith use of the disputed domain name.

The Panel observes that the Respondent apparently concealed its identity when registering the disputed domain name by using a hacked email account. This is an additional factor supporting the finding of bad faith in this case.

Furthermore, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, or to this Complaint is further evidence of bad faith, given all the circumstances of the case (see [WIPO Overview 3.0](#), section 3.2).

Based on the evidence and circumstances of this case, the Panel concludes that the requirement of registration and use of the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy has been fulfilled.

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

/Richard C.K. van Oerle/

Richard C.K. van Oerle

Sole Panelist

Date: April 28, 2023.