

ADMINISTRATIVE PANEL DECISION

Television Francaise 1 v. fodil kecheroud
Case No. D2023-1336

1. The Parties

The Complainant is Television Francaise 1, France, represented by AARPI Scan Avocats, France.

The Respondent is fodil kecheroud, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <fou.org> 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 March 28, 2023. On March 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 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, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 3, 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 3, 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 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 3, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on May 5, 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 (operating as TF1) is a leading European company in the field of production and broadcasting of TV programs. It was founded in 1974 and operates the first and oldest television channel in France. Since 2007, the Complainant broadcasts a daily television show for young people called TFOU, and in 2015, it launched a video-on-demand service for children called TFOU MAX, accessible online through the website at “www.tfoumax.fr” and also through a mobile phone application. The Complainant also develops leisure parks for children under the brand TFOU PARC, which are advertised through the website at “www.tfouparc.com”.

The Complainant is the owner of the following trademark registrations for the sign “TFOU” (the “TFOU trademark”);

- the International trademark TFOU (combined) with registration No. 751853, registered on August 1, 2000, for goods and services in International Classes 9, 16, 25, 26, 28, 35, 38, 41 and 42; and
- the French trademark TFOU (combined) with registration No. 3555553, registered on February 13, 2008, for goods and services in International Classes 9, 16, 18, 25, 26, 28, 29, 30, 32, 35, 38, 41, 42 and 43.

The Complainant is also the owner of the domain names <tfou.com>, registered on March 10, 1999, and <tfou.fr>, registered on June 3, 2003, which resolve to the Complainant’s official website at “www.tf1.fr”.

The disputed domain name was registered on June 5, 2014. At the time of the filing of the Complaint, it redirected to a parking webpage containing sponsored links and was listed for sale for USD 760.

5. Parties’ Contentions

A. Complainant

The Complainant submits that it is the most watched television channel in Europe, and that its TFOU trademark has become a well-known trademark in France and abroad in relation to the Complainant and its audiovisual activities for children entertainment.

The Complainant states that the disputed domain name is confusingly similar to its TFOU trademark, because it incorporates this trademark without any other term.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not carrying any public activity under the name TFOU and has no related trademarks. The Complainant adds that the Respondent is not related to it and has not been authorized to use the TFOU trademark or to register a domain name incorporating it.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent was aware of the existence of the Complainant and its TFOU trademark at the time of registration of the disputed domain name, because the TFOU trademark and the Complainant’s domain names incorporating it were registered by the Complainant long before the disputed domain name and because by that time the Complainant had been actively using the TFOU trademark in France and abroad for many years and enjoyed a worldwide reputation for its services. The Complainant points out that a simple online search via any search engine using the keyword “tfou” returns only results that relate to the Complainant’s websites or business. The Complainant claims that the Respondent is using the disputed domain name in bad faith. It points out that the disputed domain name resolves to a parking webpage containing sponsored links reproducing the Complainant’s TFOU trademark or related to its core business, and that the disputed domain name is offered for sale for USD 760.

B. Respondent

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

6. Discussion and Findings

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (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 Respondent has registered and is using the disputed domain name in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the TFOU trademark and has thus established its rights in this trademark for the purposes of the Policy.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel sees no reason not to follow the same approach here, so it will disregard the “.org” gTLD of the disputed domain name.

The word element of the TFOU trademark is its dominant feature, and since the disputed domain name incorporates this element, it is easily recognizable there. As discussed in section 1.7 of the [WIPO Overview 3.0](#), in 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.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the TFOU trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a 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 domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it is not commonly known by the disputed domain name, is not related to the Complainant and has not been authorized to use the TFOU trademark. The Complainant notes that the Respondent is using the disputed domain name for a parking website containing sponsored links and offers it for sale.

The Respondent does not deny the Complainant's contentions and does not allege having rights or legitimate interests in the disputed domain name. It does not provide any explanation why it has registered and how it intends to use the disputed domain name.

As discussed in sections 2.5 and 2.5.1 of the [WIPO Overview 3.0](#), fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry. UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Here, the relevant part of the disputed domain name is identical to the dominant word element of the TFOU trademark, which has been used by the Complainant for many years, and to the domain names <tfo.com> and <tfo.fr> of the Complainant. The disputed domain name thus effectively impersonates or suggests sponsorship or endorsement by the Complainant. It resolves to a parking webpage containing third-party commercial links, and Internet users attracted by its confusing similarity to the Complainant's trademark would be exposed to these links when they arrive there.

The above considerations lead the Panel to the conclusion that it is more likely that the Respondent knew of the Complainant and its TFOU trademark when it registered the disputed domain name, and registered it because it is confusingly similar to this trademark to benefit financially from the likelihood of confusion that the disputed domain name is affiliated to the Complainant by attracting Internet users looking for the services offered by the Complainant. The Panel does not regard such conduct as giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered 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; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The disputed domain name is confusingly similar to the TFOU trademark and to the domain names of the Complainant for its TFOU offerings, which carries a risk of implied affiliation with the Complainant. It

resolves to a parking webpage containing third-party commercial links. These links appear as being pay-per-click links for Internet marketing, where advertisers paying a fee each time one of their ads is clicked.

The Respondent does not provide any plausible explanation for the registration and use of the disputed domain name.

This combination of factors leads the Panel to the conclusion that it is more likely than not that the Respondent is well aware of the Complainant and its TFOU trademark, and has attempted to impersonate it and mislead Internet users to believe that the disputed domain name and the links featured on the associated webpage are affiliated to or endorsed by the Complainant, and thus take advantage of its reputation for financial gain.

For these reasons, the Panel finds that the disputed domain name was registered and is being used 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 <tfou.org> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: May 19, 2023