

ADMINISTRATIVE PANEL DECISION

Drouot Patrimoine v. DAVID TEST, DROUOT PATRIMOINE
Case No. D2023-2410

1. The Parties

The Complainant is Drouot Patrimoine, France, represented by Gide Loyrette Nouel, France.

The Respondent is DAVID TEST, DROUOT PATRIMOINE, France.

2. The Domain Name and Registrar

The disputed domain name <drouot-patrimoine.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 2, 2023. On June 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 5, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 12, 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 June 15, 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 June 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 14, 2023.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on July 21, 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 the holding company of one of the largest and oldest auction house. It was established in 1852 in Paris.

As a basis for its Complaint, the Complainant relies in particular on the European Union trade mark DROUOT (word) No. 008395709, which is registered since January 12, 2010.

The disputed domain name, <drouot-patrimoine.com>, was registered on March 8, 2023. The identity of the Respondent was disclosed by the Registrar in the course of the proceeding. The address provided for by the Respondent corresponds to that of the Complainant, in Paris.

In May 2023, third parties exchanged emails with an individual who was allegedly an employee of the Complainant, regarding an offer of investment in real property, specifically in student housing in different countries across Europe. The Complainant specified that contrary to what this person was stating he is not a former employee of the Complainant. The Respondent seem to have taken the name of a person who seems to be a qualified notary and a financial investment adviser. The emails sent to the potential investors used the Company name of the Complainant, and its corporate address. Also, it contained in enclosure a very detail promotional catalogue full of details on the potential investment. The catalogue included numerous information relating to the Complainant, such as its company name, its head office, its VAT number, its corporate number, the name of its Chairman, etc. Two of the potential clients alerted the Complainant and the very sophisticated fraud was discovered.

Shortly after, the Complainant filed a formal complaint with the French police, as well as the present Complaint.

5. Parties' Contentions

A. Complainant

The arguments of the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant indicates that the disputed domain name is confusingly similar to its earlier trade mark DROUOT. Indeed, it reproduces entirely the distinctive element "drouot", combined with the word "patrimoine". It adds that this combination corresponds exactly to its company name.

On the second element of the Policy, the Complainant claims that the Respondent has no rights in the disputed domain name: he does not have any corresponding trade mark, and has not been granted any authorization whatsoever from the Complainant. Likewise, the Respondent lacks legitimate interests in the domain name, as it passes himself off as the Complainant with a phishing scam.

On the third element of the Policy, the Complainant argues that the Respondent registered and used the disputed domain name in bad faith. The Respondent specifically targeted the Complainant when registering the disputed domain name, and then he used it in support of its fraudulent activities.

B. Respondent

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

6. Discussion and Findings

As a preliminary remark, the Panel notes that the Complainant has filed a complaint with the French police

and has seized the district attorney of Paris over the facts described above. In accordance with paragraph 18(a) of the Rules, “[i]n the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain-name dispute that is the subject of the Complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision”. In this case, the initiatives taken by the Complainant with the police and the district attorney do not have an impact on this proceeding. Indeed, they do not open per se a specific judiciary proceeding and, more importantly, they do not directly concern the registration and use of the disputed domain name. Actually, in the letter sent to the district attorney, the Complainant mentions that it has launched the present proceeding with the Center. Therefore, there is no cause for suspension or termination of the UDRP proceeding, and the Panel will take a decision on the merits of this case.

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trade mark or a service mark in which it has rights. The first criterion is perceived primarily as a standing requirement for the Complainant.

The Complainant has shown that it holds rights over the trade mark DROUOT. This trade mark is fully reproduced in the disputed domain name <drouot-patrimoine.com>. The addition of the element “patrimoine” does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Hence, the first element set out in paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent’s rights or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice 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 (as individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trade mark 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 trade mark or service mark at issue.

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default, as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prime facie* case against the Respondent which has not been commonly known by the disputed domain name and is not affiliated with the Complainant nor has it been licensed or otherwise permitted to use any of the Complainant's trade marks or to register a domain name incorporating any of those trade marks.

Besides, the disputed domain name is not used in connection with a *bona fide* offering of goods or services. On the contrary, the operation by the Respondent of a phishing scheme impersonating the Complainant demonstrates a lack of rights or legitimate interests.

Moreover, the nature of the disputed domain name, comprising the Complainant's trade mark in its entirety with the element "-patrimoine", thereby reproducing identically its company name, carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1. The Panel further notes that the use of the disputed domain name to send impersonating emails affirms such risk.

The Complainant is therefore deemed to have satisfied the second element set out in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances, which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location.

The Respondent has acted in bad faith, when registering and using the disputed domain name.

First, the Respondent had necessarily the Complainant's trade mark in mind when it registered the disputed domain name. The Panel considers that the association of the historic and well-known trade mark DROUOT with the element "-patrimoine" confirms the Respondent's awareness that the name "Drouot patrimoine" is the company name of the Complainant. Also, this word may have different connotations in France, including that of real estate. Also, the Respondent has acted in bad faith by providing false contact details.

Second, the Respondent has operated a phishing scheme to the detriment of the Complainant and of potential investors. The use of a misleading email address, to impersonate an employee of the Complainant, is meant to attract potential investors for the commercial gain of the Respondent and denotes the Respondent's bad faith. See [WIPO Overview 3.0](#), section 3.4

Accordingly, the Panel finds that the third criteria element set out in paragraph 4(a) of the Policy is also 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, <drouot-patrimoine.com>, be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: August 4, 2023