

ADMINISTRATIVE PANEL DECISION

Comité National pour la Sécurité des Usagers de l'Electricité (CONSUEL) v.
tereza benesova (BENESOVA16397)

Case No. D2023-2787

1. The Parties

The Complainant is Comité National pour la Sécurité des Usagers de l'Electricité (CONSUEL), France, represented by Coblence Avocats, France.

The Respondent is tereza benesova (BENESOVA16397), Czech Republic.

2. The Domain Name and Registrar

The disputed domain name <consuelle.com> is registered with Ascio Technologies Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 30, 2023. On June 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 4, 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 (Not disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 11, 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 amendment to the Complaint on July 12, 2023.

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 July 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 8, 2023. The Response was filed with the Center on July 21, 2023. The Center acknowledged receipt of the Response on July 27, 2023.


The Center appointed Warwick A. Rothnie as the sole panelist in this matter on August 10, 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 non-profit association which, by decree dated September 29, 2004, was declared by the French government as the public authority dedicated to promoting the professional quality of electrical contractors.

Amongst other things, it promotes its services and provides relevant information from the website to which the domain name “www.consuel.com” resolves.

The Complaint includes evidence that the Complainant owns at least four registered trademarks in France. All are semi-figurative marks. For present purposes, it is sufficient to note:

- (a) French Registered Trademark No. 3945414,  , which was registered on March 22, 2013 in respect of a range of goods and services in International Classes 9, 11, 38, 41 and 42; and
- (b) French Registered Trademark No. 4690165,  , which was registered on December 16, 2022 in respect of a range of goods and services in International Classes 9, 11, 16, 35, 38, 41 and 42.

According to the Whois record, the disputed domain name was registered on May 22, 2023.

When the Complaint was filed, the disputed domain name resolved to the host’s page.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy in the term CONSUEL. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

In undertaking the comparison required by this element of the Policy, it is permissible in the present circumstances to disregard the generic Top-Level Domain (“gTLD”) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10. The figurative elements of the Complainant’s trademarks are not so dominating that the verbal element cannot be considered an essential or important part of the trademarks in this case. Accordingly, it is appropriate to apply the usual rule.

Disregarding the “.com” gTLD, the disputed domain name consists of the Complainant’s registered trademark and the term “le”. As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity. See e.g. [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

B. 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 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. [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name well after the Complainant began using its trademarks and also well after the Complainant had registered its trademarks.

It is not in dispute between the parties that the Respondent is not associated with the Complainant in any way and has not been authorised to use the Complainant’s trademarks.

The disputed domain name is not derived from the Respondent’s formal name.

However, the Respondent points out that “Consuelle” is, or can be, a girl’s name. See e.g. “[www.nameslook.com/consuelle](#)”. The Respondent further claims that she is an artist or photographer who uses the professional name “Consuelle Crystal” and registered the disputed domain name in connection with plans to publish her portfolio online.

The Response includes a link to an online magazine report published in 2017 in which the Respondent is credited as the photographer of the interview subjects available at “[www.super.cz/501358-dve-sexy-moderatoroky-zavisle-na-behani-fotily-nove-fotky-jak-se-vam-libi.html](#)”.

The Respondent has also provided evidence from Apple Support that she created her iCloud account in the name “consuellecrystal” in December 2015. In addition, the Respondent maintains an Instagram account

with 1662 followers under the name “Consuelle”. On her Instagram account, the Respondent identifies herself as a “Fine Arts and Ass [*sic*] graduate and social media creative. The Response includes evidence that the Respondent adopted this username for her account on November 10, 2018.

In this connection, the Panel notes that paragraph 4(c)(ii) of the Policy provides as an example of a situation in which the Respondent may have rights or legitimate interests in a disputed domain name:

...

- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights;

....

The short time between registration of the disputed domain name and the filing of the Complaint is not a period of such a length as to undermine the credibility of the Respondent’s claimed purpose in registering the disputed domain name.

While the Panel does not understand what an “Ass” graduate may be – if that is not a typographical error, there is no basis in the material before the Panel to reject the evidence that the Respondent has been professionally known as “Consuelle Crystal” or “Consuelle” since at least 2015.

In these circumstances, the Panel finds that the Respondent has rebutted the *prima facie* case that the Complainant has established under this requirement. Accordingly, based on the available record, the Panel finds the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

In the circumstances, there is no value in considering the third element under the Policy as the Complaint must fail in any event.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides, in part:

“If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.”

Paragraph 1 of the Rules defines “Reverse Domain Name Hijacking” to be “using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name”.

The fact that the Complaint has failed is not sufficient in itself to warrant a finding of reverse domain name hijacking.

The Panel considers that a finding of reverse domain name hijacking is not appropriate in the present case. First, as noted above, the disputed domain name resolved to a parked website when the Complaint was filed. Secondly, the Respondent’s identity was not publicly available through the Whois service as the Respondent had taken advantage of a Privacy protection service. Thirdly, even after the Respondent’s name was disclosed by the Registrar, that name was different to the professional name which the Respondent uses and which provides an explanation for her registration of the disputed domain name. In these circumstances, the Panel considers that a finding of reverse domain name hijacking is not appropriate.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: August 24, 2022.