

ADMINISTRATIVE PANEL DECISION

APAVE SA v. Monsieur ROUANE, CloudStrong
Case No. D2023-3687

1. The Parties

The Complainant is APAVE SA, France, represented internally.

The Respondent is Monsieur ROUANE, CloudStrong, France.

2. The Domain Name and Registrar

The disputed domain name <apave.site> (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 September 1, 2023. On September 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 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 (XXX- DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 6, 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 September 14, 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 October 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2023. The Respondent sent an informal email communication on September 6, 2023. Accordingly, the Center informed the Parties of its commencement of Panel appointment process on November 1, 2023.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on November 3, 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 French company, named APAVE, specialized in the management of technical, human, environmental and digital risks, notably through training services.

The Complainant is the owner of several trademarks incorporating the term “apave” (the “APAVE Trademarks”):

- the French wordmark APAVE, registration no. 3707956, registered on July 2, 2010, for products and services in classes 9, 16, 35, 37, 38, 41, 42 and 45;

- the International wordmark APAVE, registration no. 1430432, registered on November 20, 2017, for products and services in classes 9, 16, 35, 37, 41, 42 and 45;

- the United States of America wordmark APAVE, registration no. 6398618, registered on June 29, 2021, for products and services in classes 9, 16, 35, 37, 41, 42 and 45.

The Complainant has also registered several domain names featuring its APAVE Trademarks, such as <apave.com> and <apave.fr>.

The Disputed Domain Name was registered on February 14, 2023, and resolves to a parked page comprising pay-per-click (“PPC”) links, including links related to training services.

5. Parties’ Contentions

A. Complainant

First, the Complainant contends that the Disputed Domain Name is identical to its APAVE Trademarks, and its registered domain names.

Then, the Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name since APAVE is the Complainant’s corporate name and therefore represents its identity to third parties. The Complainant explains that its APAVE Trademarks and registered domain names predate the Disputed Domain Name.

Finally, the Complainant asserts that the Disputed Domain Name was registered and is being used in bad faith since the Respondent has knowingly attempted to attract, for profit, Internet users to a website or other online space belonging to it, by creating a likelihood of confusion with the applicant’s trademark as regards the source, sponsor, affiliation or endorsement of the registrant’s website or web space or of a product or service offered therein. The Complainant explains that the Disputed Domain Name refers to website offering professional training which is one of the essential services offered by the Complainant. Furthermore, the Complainant contends that the website to which the Disputed Domain Name resolves does not appear to implement security measures in accordance with the best practices used in the field of website security, which poses a risk to the Complainant’s customers and could also impact the Complainant’s image since the Complainant is also a player in cybersecurity.

B. Respondent

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

However, the Center did receive an informal communication from the Respondent before the commencement of the proceedings indicating it does not really understand the email it received from the Center. After explanations from the Center, the Respondent did not write to the Center again.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (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 Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the APAVE Trademarks.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially 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.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. 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 the UDRP (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

The Panel finds that the Disputed Domain Name is composed of:

- the APAVE Trademark; and
- the generic Top-Level Domain ("gTLD") suffix ".site".

According to prior UDRP panel decisions, it is sufficient that the domain name incorporates the entirety of a trademark, in order to consider the domain name as confusingly similar to that mark for purposes of UDRP standing.

Moreover, the Panel adds that the gTLD in a domain name is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark. See section 1.11.1 of the [WIPO Overview 3.0](#).

Finally, the Panel holds that the Disputed Domain Name is identical to the APAVE Trademarks, and that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant shall demonstrate that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Policy, paragraph 4(c), outlines circumstances that if found by the Panel to be proved shall demonstrate 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 domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the 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 domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

According to prior UDRP panel decisions, it is sufficient that a complainant shows *prima facie* that a respondent lacks rights or legitimate interests in a domain name in order to shift the burden of production to the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Indeed, while the overall burden of proof in a 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 *prima facie* that a 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](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

Indeed, it appears that the Disputed Domain Name incorporates the APAVE Trademarks in their entirety which also constitutes the Complainant's corporate name.

Moreover, the Panel finds that the Respondent is not commonly known by the Disputed Domain Name or that the Respondent has the intent to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, the Disputed Domain Name resolved to a parked page comprising PPC links, including links related to training services, which is part of the Complainant's activities. According to prior UDRP panel decisions, the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see section 2.9 of the [WIPO Overview 3.0](#)).

Finally, the Respondent did not reply to the Complainant's contentions, and consequently, did not rebut the Complainant's *prima facie* case.

Therefore, according to the Policy, paragraphs 4(a)(ii) and 4(c), the Panel considers that the Complainant has established that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name.

C. Registered and Used in Bad Faith

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the Disputed Domain Name has been registered and is being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or

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

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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.

First, the Panel considers that it is established that the APAVE Trademarks were registered and used well before the registration of the Disputed Domain Name. The Panel also notes that the APAVE Trademarks are distinctive and have no meaning other than to refer to the Complainant and its products. Furthermore, the Complainant has provided evidence that an online search of the term "apave" provides results related to the Complainant. Therefore, the Panel considers that the Respondent should have known that its registration of the Disputed Domain Name, which incorporates solely and in its entirety the APAVE Trademarks, would be identical or confusingly similar to these.

Moreover, as discussed above, the Panel points out the fact that the Disputed Domain Name resolved to a parked page comprising PPC links, including links related to professional training services, in competition with the Complainant's services.

The Panel points out that this use of the Disputed Domain Name by the Respondent demonstrates that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's APAVE Trademarks as to the source, sponsorship, affiliation, or endorsement.

Finally, the Respondent has not provided any response to the Complainant's contentions.

Therefore, in view of all the circumstances of this case, the Panel holds that the Respondent has registered and is using the Disputed Domain Name in bad faith according to the Policy, paragraphs 4(a)(iii) and 4(b).

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, <apave.site> be cancelled.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: November 17, 2023