

ADMINISTRATIVE PANEL DECISION

Colas v. PASCAL HUET

Case No. D2023-4453

1. The Parties

The Complainant is Colas, France, internally represented.

The Respondent is PASCAL HUET, France.

2. The Domain Name and Registrar

The disputed domain name <aximum-sas.com> is registered with Combell NV (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2023. On October 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 8, 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 November 13, 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 November 14, 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 November 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 7, 2023.

The Center appointed Elise Dufour as the sole panelist in this matter on December 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 the head of an international French group established in 1929 specialized in construction and maintenance of transport infrastructure.

The Complainant employs around 58,000 people and undertakes about 60,000 projects every year via a network of 900 construction units and 3,000 material production and recycling sites in around 50 countries worldwide.

In 2022, the Complainant's consolidated revenue totaled EUR 15,5 billion.

AXIMUM, is a fully owned subsidiary of the Complainant, and is specialized in the domain of Road Safety & Signaling and is the parent company of six industrial subsidiaries. AXIMUM employs around 2,000 people with more than 20,000 constructions site per year and a turnover of EUR 361 million in 2020.

The Complainant is the owner of several trademark registrations for AXIMUM, including the following ones :

- International trademark AXIMUM No. 1011558 registered on April 14, 2009 in classes 2, 6, 9, 11, 17, 19 and 37 ;
- French Trademark No.  4601967, registered on April 3, 2020, in classes 1, 2, 6, 9, 11, 17, 19, 20, 37, 42.

The Complainant is also the owner of the domain name <aximum.fr>, registered on October 15, 2008 used by the Complainant to promote its services under the trademark AXIMUM.

The disputed domain name was registered on October 15, 2023, and does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

First, the Complainant claims that the disputed domain name is confusingly similar to its trademark AXIMUM. It points out that the disputed domain name reproduces in full the Complainant's distinctive trademarks AXIMUM and the addition of the descriptive term "sas" (French term for simplified jointstock company) does not prevent the disputed domain name from being confusingly similar to the Complainant's trademark.

Second, the Complainant indicates that the Respondent lacks rights or legitimate interests in the disputed domain name. Indeed, the disputed domain name has been registered anonymously. The address used by the Respondent is the address of the Complainant's subsidiary AXIMUM, which may be taken as a desire for the Respondent to hide its own address and to confuse the Complainant. The Respondent is not sponsored by or affiliated with the Complainant in any way and was not given permission to use the Complainant's trademark in any manner. The disputed domain name is neither used in connection with a bona fide offering of goods or services nor does it constitute a legitimate non-commercial or fair use as the disputed domain name leads to an inactive page.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith.

As per the registration of the disputed domain name, the Complainant asserts that the Complainant's trademark has a strong reputation worldwide and the Respondent, domiciled in France, could not have been unaware of its trademarks at the time of registration of the disputed domain name.

As per its use, the disputed domain name is being used by the Respondent to conduct a fraudulent activity to deceive the public, extort money, goods and products from the Complainant's suppliers and infringe the Complainant's rights.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. While the addition of other terms (here "sas") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent must have had the Complainant and its AXIMUM trademark in mind when registering the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to target the Complainant's trademark and mislead third parties. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

As per the use, the Complainant asserted and provided evidence that the Respondent used the disputed domain name in connection with email addresses in order to impersonate the Complainant and fraudulently induce numerous Complainant's suppliers to obtain merchandise and pass the payment on to AXIMUM.

The Respondent has not contested the Complainant's allegations. Panels have held that the use of a domain name for illegal activity here, claimed as phishing constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

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 <aximum-sas.com> be transferred to the Complainant.

/Elise Dufour/

Elise Dufour

Sole Panelist

Date: January 1, 2024