

ADMINISTRATIVE PANEL DECISION

Altavia SA v. Aurelien Merdassi, Blacksales
Case No. D2023-5136

1. The Parties

The Complainant is Altavia SA, France, represented by IP Twins, France.

The Respondent is Aurelien Merdassi, Blacksales, France.

2. The Domain Name and Registrar

The disputed domain name <altaviafrance.com> (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 December 8, 2023, in connection with three domain names. On December 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names referred to in the Complaint. On December 11, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrants and contact information for the domain names referred to in the Complaint which differed from the named respondents (Domains By Proxy, LLC, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 13, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint adding the Registrar-disclosed registrants as formal Respondents and provide relevant arguments or evidence demonstrating that all named registrants are, in fact, the same entity and/or that all disputed domain names are under common control; and/or indicate which domain names will no longer be included in the current Complaint. The Complainant removed two domain names from its initial complaint and filed an amended Complaint on December 18, 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 December 20, 2023. In accordance with the Rules,

paragraph 5, the due date for Response was January 9, 2024. The Respondent did not submit any formal response. Accordingly, the Center notified the Respondent's default on January 16, 2024. The Respondent sent email communications to the Center on January 16 and 22, 2024.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on January 22, 2024. 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 an international group dedicated to retail marketing services, founded in 1983, present in 45 countries.

The Complainant is the owner of several registered trademarks incorporating the term ALTAVIA to promote its activities and services including (the "ALTAVIA Trademarks"):

- the French word trademark ALTAVIA No. 99773109, registered on February 4, 1999, for services in classes 35, 39, and 41 and duly renewed;

- the international word trademark ALTAVIA No. 722773, registered on November 4, 1999, for services in classes 35 and 42 and duly renewed;



- the international figurative trademark ALTAVIA No. 910751, registered on August 3, 2006, for services in classes 35, 39, 40, 41 and 42 and duly renewed.

The Complainant is also the owner of several domain names incorporating the ALTAVIA Trademarks, such as <altavia-france.com>, registered in 2003, or <altaviafrance.fr> and <altaviafrance.com> registered in 2023.

The Disputed Domain Name was registered on May 3, 2023, and resolves to a parked page comprising pay-per-click ("PPC") links, to websites which offer communication and marketing services and is also offered for sale on GoDaddy.

The Respondent is an individual located in France and seems to be the cofounder of a company named Blacksales.

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.

Notably, the Complainant contends that the Disputed Domain Name is highly similar to its ALTAVIA Trademark which it incorporates in its entirety. The Complainant adds that the Disputed Domain Name also contains the term "frace", which is a common and obvious misspelling of the term "France" namely the typo consisting in omitting the letter "n". The Complainant concludes that its ALTAVIA Trademark is clearly recognizable within the Disputed Domain Name.

Then, the Complainant stands that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant explains that it has not authorized the use of its ALTAVIA

Trademark in the Disputed Domain Name in any manner or form. The Complainant adds that the Respondent has acquired no trademark in the term ALTAVIA and is not known by the Disputed Domain Name. The Complainant also indicates that the Respondent is not using the Disputed Domain Name for a bona fide offering of goods or services, considering that the Disputed Domain Name resolves to a parked page comprising PPC links in relation with communication and marketing services as those offered by the Complainant. The Complainant considers that such use demonstrates that the Respondent has used the Disputed Domain Name to derive a commercial benefit. The Complainant adds that the Disputed Domain Name is offered for sale and that, considering the worldwide renown of the Complainant's trademarks, there is no plausible use of the Disputed Domain Name that would be legitimate, fair and noncommercial.

Finally, the Complainant asserts that the Disputed Domain Name was registered and is used in bad faith by the Respondent. The Complainant considers that it is inconceivable that the Respondent ignored the Complainant or its earlier rights and that its choice of the Disputed Domain Name cannot have been accidental. The Complainant also indicates that the Disputed Domain Name resolves to a parked page comprising PPC links and is offered for sale, which demonstrates that the Respondent registered the Disputed Domain Name primarily for the purpose of selling it for valuable consideration in excess of its documented out-of-pocket costs directly related to the Disputed Domain Name. The Complainant also submits that the Disputed Domain Name is not actively used.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, the Respondent sent informal emails on January 16 and 22, 2024, to the Center asking for explanations on what the Center was asking for, and stating that if the Complainant was interested in buying the Disputed Domain Name that was something that could be discussed.

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

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.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term here, "frace" 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 mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Indeed, the Panel considers that the added term is a misspelling of a geographical designation (“frace” for “france”).

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.

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.

Indeed, it appears that the Respondent has not received any authorization to use the ALTAVIA Trademarks in any manner, including for the registration of the Disputed Domain 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 resolves to a parked page comprising PPC links, including links related to marketing and communication services, which is part of the Complainant’s activities.

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 has registered the Disputed Domain Name well after the registration of the ALTAVIA Trademarks. The Panel finds it more likely than not that the Respondent had the ALTAVIA Trademarks in mind when registering the Disputed Domain Name. The Panel also notes that the Disputed Domain Name resolved to a parking page comprising PPC links including links related to marketing and communication services, which is part of the Complainant’s activities, and that the Disputed Domain Name is offered for sale.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Indeed, the Panel also notes that the Disputed Domain Name resolved to a parked page comprising PPC links, including links related to marketing and communication services, which is part of the Complainant’s activities, and that the Disputed Domain Name is offered for sale.

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 <altaviafrance.com> be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: February 1, 2024