

ADMINISTRATIVE PANEL DECISION

But International v. Vincen Miller

Case No. D2024-0167

1. The Parties

The Complainant is But International, France, represented by Nameshield, France.

The Respondent is Vincen Miller, France.

2. The Domain Name and Registrar

The disputed domain name <fr-but.com> is registered with EuroDNS S.A. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 16, 2024. On January 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 17, 2024, 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 January 18, 2024, 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 January 19, 2024.

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 January 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 15, 2024.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on February 21, 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 a French company established in 1972, which operates under the BUT brand a house furniture network with more than 320 stores in France. It is one of the leaders in the French furniture industry with a turnover in 2022 of EUR 2.7 billion and about 9,000 employees. Its website has 125 million visits per year.

The Complainant owns several registered trademarks containing the term “but”, including the:

- French Trademark No. 98756795, registered on October 28, 1998; and
- International Trademark No. 974306, registered on December 28, 2007

(together hereinafter referred to as “the Mark”).

The Complainant also owns inter alia the <but.com> domain name, registered on February 27, 1996, and the <but.fr> domain name, registered on November 11, 1996.

The disputed domain name was registered on January 27, 2023, and resolved to the Complainant’s official website. It has been used to send phishing emails. At the time of this decision, it resolves to an error page.

5. Parties’ Contentions

A. Complainant

(i) The Complainant submits that the disputed domain name reproduces the Mark, in which it has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety and that the addition of the term “fr” before the Mark is not capable of dispelling the confusing similarity.

(ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends that it never authorized the Respondent to use the Mark in any manner and that the Respondent has never had any affiliation with the Complainant.

(iii) The Complainant submits that the Respondent has registered the disputed domain name in bad faith. The Complainant alleges that the Respondent had knowledge of the Mark when registering the disputed domain name.

(iv) The Complainant submits that the Respondent is using the disputed domain name in bad faith.

(v) The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects - Failure to Respond

As aforementioned, no Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

The Panel does not find any exceptional circumstance in this case which would cause the Panel to proceed differently.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of Paragraph 4(a) of the Policy

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 Mark is recognizable 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.

While the addition of another term here, such as "fr" (i.e., the country code for France), 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.

Regarding the generic Top-Level Domain ("gTLD") ".com" in the disputed domain name, it is well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity. [WIPO Overview 3.0](#), section 1.11.1.

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.

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.

Having reviewed the 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

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.

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name.

First, the registration of a domain name that is confusingly similar to a famous or widely-known trademark by an entity that has no relationship to that mark may be, depending on the circumstances, evidence of opportunistic bad faith. See section 3.1.4, [WIPO Overview 3.0](#).

Second, it is well-established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, evidence of bad faith registration. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, at least one prior UDRP panel has found that the Mark is well known in France. See *But International v. Nom anonymisé*, WIPO Case No. [D2023-0244](#).

Considering the fact that the Respondent is located in France where the Complainant is headquartered, and the evidence provided by the Complainant that phishing emails were sent, the Panel finds that it is impossible to believe that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See *Barney's Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#); citing *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#); and *Semcorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#).

In addition, the use of a domain name for an activity which is intrinsically illicit or fraudulent is systematically considered as evidencing the Respondent's bad faith. [WIPO Overview 3.0](#), sections 3.1.4 and 3.4.

In the present case, the Panel notes that the Respondent intentionally created confusion with the Mark for fraudulent purposes by using the disputed domain name to create email addresses and to send phishing emails.

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

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 <fr-but.com> be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: February 28, 2024