

## **ADMINISTRATIVE PANEL DECISION**

Société Nouvelle du Journal l'humanité v. Isaiah Prue  
Case No. D2024-0387

### **1. The Parties**

The Complainant is Société Nouvelle du Journal l'humanité, France, represented by GPI MARQUES, France.

The Respondent is Isaiah Prue, United States of America (“United States”).

### **2. The Domain Name and Registrar**

The disputed domain name <piffmagazine.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 29, 2024. On January 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 30, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 January 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 21, 2024. On the same day, the Respondent sent a communication to the Center. On March 14, 2024, the Panel issued Procedural Order No. 1, to which the Complainant responded on March 18, 2024. The Respondent responded on March 23, 2024. The Panel issued Procedural Order No. 2 on March 25, 2024, giving the Complainant an opportunity to respond to the Respondent’s response by March 28, 2024. The Complainant did not submit a response.

The Center appointed Jeremy Speres as the sole panelist in this matter on March 4, 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 publishing company operating for over a century, with its flagship publication, L'HUMANITÉ, available in daily, weekly, weekend, print and electronic versions, having been published since 1904. In 1948 the Complainant created a comic book dog character named "Pif" for use in its daily newspaper. The character became popular, and a comic book magazine was launched in 1969 under the name "Pif", with further dedicated "Pif" magazines launched thereafter. Currently, the Complainant's licensee publishes the quarterly "Pif le mag" featuring this character.

The Complainant owns the domain name <piflemag.fr> from which it hosts its primary "Pif le mag" website. The Complainant's PIF mark is registered in France, including under French Trade Mark Registration No. 3253620 Pif (stylised) in classes 9, 14, 16, 18, 20, 21, 24, 25, 28, 29, 30, 35, 38, and 41, with a registration date of October 27, 2003.

The disputed domain name was registered on September 10, 2023, and currently does not resolve to an active website. The Complainant's evidence establishes that the disputed domain name previously resolved to a website featuring Pay-Per-Click ("PPC") advertisements for, amongst other things, magazines.

#### **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 was registered and used in bad faith in order to draw traffic to the Respondent's website through typosquatting confusion with the Complainant's trademark for the Respondent's commercial gain.

##### **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions. The Respondent's first communication to the Center on February 21, 2024, consisted purely of an expletive. The Respondent's response to Panel Order No. 1 of March 23, 2024, stated as follows:

"I am an employee of P.I.F.F. Magazine and in my position as Assistant Editor, registered the domain for www.piffmagazine.com for our entertainment marketing magazine based out of USA. We have been in business since 2012 and never knew about your company Pif Magazine until all of this. I thought it was a joke at first which is why I had responded how I did. If you are interested, we will sell you the domain and all associated rights to the PIFF Magazine company. Let me know if you'd like to discuss further."

#### **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.

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.

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 disputed domain name incorporates the entirety of the Complainant’s well-known PIF mark, the Complainant has not authorised the Respondent to use its mark, and the disputed domain name has been used for PPC advertisements that compete with the Complainant and subsequently did not resolve to a webpage.

However, based on its general powers articulated inter alia in paragraphs 10 and 12 of the Rules, the Panel’s independent Internet searches revealed a magazine focussing on the music industry published for numerous years under the title “P.I.F.F. – Positive Influence for the Future”. There are 8 editions published between 2018 and 2020 at: “[www.issuu.com/piffmagz](http://www.issuu.com/piffmagz)”.

This magazine maintains an active Facebook page at “[www.facebook.com/piffmagz/](http://www.facebook.com/piffmagz/)” and an Instagram page at “[www.instagram.com/piffmagz/](http://www.instagram.com/piffmagz/)”. There are no clear indicators of targeting of the Complainant’s PIF character or magazine in any of these published editions or on any of these platforms. The magazine appears to focus on the United States, not the Complainant’s jurisdiction and primary market of France.

The editor of this magazine is listed as one “Xavier Prue”, and the publication address is listed as Connecticut, United States. These details overlap with the details listed for the Respondent in the Whois record for the disputed domain name: the Respondent’s surname is listed as “Prue”, and his address is listed in Connecticut, United States.

In light of these findings, the Panel issued Procedural Order No. 1, giving the Respondent an opportunity to clarify whether it has any relationship with P.I.F.F. magazine, and giving the Complainant an opportunity to comment on the Panel’s independent findings.

The Complainant responded by stating that it was not aware of P.I.F.F. magazine and that an Internet search in France did not display results relating to that magazine. The Complainant also stated that the Respondent’s information in the Whois record may be false, that the domain name and telephone numbers for P.I.F.F. magazine specified on its Facebook page are different to the disputed domain name and the telephone number listed in the Whois record, and that it seems that P.I.F.F. magazine has not been published since 2020. The Complainant maintained its stance that the disputed domain name is a case of typosquatting.

The Respondent's informal response appears to align with the Respondent's possible involvement with P.I.F.F. magazine. The Respondent would in that sense have rights or legitimate interests in the disputed domain name under paragraph 4(c)(i) of the Policy.

However, in terms of the Panel's powers under paragraph 10(d) of the Rules, the Panel affords the Respondent's response little weight. It did not address the specific allegations made in the Complaint and no certification as to the response's completeness and accuracy was provided. Most importantly, the Respondent did not submit any evidence in support of his claimed association with P.I.F.F. magazine.

On balance of probabilities, bearing in mind that the burden of production is on the Respondent, the Panel cannot say that it is more likely than not that the Respondent enjoys rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Complainant has not met its burden of proof in respect of bad faith for the following reasons.

Although the evidence does not unequivocally establish that the Respondent is in fact the editor of P.I.F.F. magazine as discussed above, the Whois record for the disputed domain name contains registrant details that overlap with the details for the editor of P.I.F.F. magazine. These details – if presumed to be true and accurate – are such that the overlap is unlikely to have been mere coincidence. Although little weight is afforded to it, this was confirmed by the Respondent in his informal response as well.

The composition of the disputed domain name contains “piff” and not “pif”. It could be that this is a typo of the Complainant's mark, but given the overall circumstances of this case, that is not a conclusion the Panel is prepared to draw.

The Panel notes that there is also a <pifmagazine.com> which is used for another magazine completely unrelated to the Complainant. This shows that the PIF mark is still capable of good faith use by others and that would not necessarily have been determinative.

The Complainant points to usage of the disputed domain name for PPC advertisements, some of which relate to magazines, as evidence of the Respondent's intentions to target the Complainant. Although the presence of PPC advertisements that take advantage of a complainant's trade mark is an indicator of bad faith in certain circumstances, it is not clear that the PPC advertisements in this case were intended to take advantage of the Complainant's mark – versus the latter term “magazine”. It is well known that the subjects of PPC advertisements are often programmatically selected based on the composition of the domain name in question, and it is quite possible that the inclusion of the word “magazine” in the disputed domain name triggered advertisements for magazines, as opposed to “pif” or “piff”. And while the Respondent cannot disclaim responsibility for automatically generated PPC advertisements ([WIPO Overview 3.0](#), section 3.5), in the circumstances it is not clear the purpose of the registration was to target any particular third party with these advertisements.

The Respondent is ostensibly based in the United States. The Complainant's evidence does not establish that its mark is well known in the United States or that it has ever been used there. Thus, it cannot be inferred that the Respondent knew, or should have known, of the Complainant's mark based on usage or a reputation in the Respondent's jurisdiction.

Taking all of the facts in this case into consideration, it is not clear that the Respondent had any particular third party in mind when registering the disputed domain name. In any event, it is more likely that the Respondent had P.I.F.F. magazine in mind than it is that he had the Complainant's PIF mark in mind. Given that the onus is on the Complainant to prove its case on balance of probabilities, the Panel finds that there is insufficient evidence of bad faith targeting of the Complainant.

The Panel finds the third element of the Policy has not been established.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: April 5, 2024