

ADMINISTRATIVE PANEL DECISION

Alain Afflelou Franchiseur v. Domain Privacy, Domain Name Privacy Inc
Case No. D2024-0500

1. The Parties

The Complainant is Alain Afflelou Franchiseur, France, represented by Novagraaf France, France.

The Respondent is Domain Privacy, Domain Name Privacy Inc, Cyprus.

2. The Domain Name and Registrar

The disputed domain name <afflelou.net> is registered with Communigal Communications Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 2, 2024. On February 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 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 (Privacy Protection Service, Provided through Communigal Communication Ltd) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 8, 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 February 13, 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 February 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 6, 2024.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on March 14, 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 in this proceeding is an optical products company headquartered in France, founded in 1975. The Complainant is a large franchisor of optical products and services in Europe.

The Complainant is, inter alia, the owner of:

- International trademark AFFLELOU (word), registration number 1305969, registered on April 26, 2016, designating numerous countries; and
- French trademark AFFLELOU (word), registration number 4267761, registered on August 19, 2016.

The Complainant is also the holder of the domain names <afflelou.com> (registered on September 13, 1999) and <afflelou.net> (registered on June 17, 1999).

The Complainant provides evidence that it first sought to settle this matter amicably through a cease-and-desist letter sent to the privacy service as indicated in the Whois database as the registrant for the disputed domain name on October 6, 2023, to which it received no answer.

The disputed domain name was registered on September 18, 2023, and is currently linked to an active website, displaying Pay-Per-Click ("PPC") hyperlinks related to the Complainant's business and products, namely optical products.

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 Respondent chose to register the disputed domain name by wilfully misspelling the Complainant's trademark AFFLELOU to create consumer confusion and obtain unlawful financial gains, the only difference between the Complainant's trademark and the disputed domain name being the lack of the letter "l" in the first syllable; that the Respondent has no rights or legitimate interests in the disputed domain name; and that the presence of mail exchange ("MX") records raises the possibility that the disputed domain name may be used for fraudulent email communications. The Complainant further asserts that bad faith based on a zone file containing MX records has already been affirmed in previous cases.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights; and
- (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 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.

The only difference between the Complainant's trademark and the disputed domain name is the lack of the letter "I" in the first syllable and the generic Top-Level Domain ("gTLD") ".net". In this sense, [WIPO Overview 3.0](#), section 1.9 states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". The gTLD suffix is generally disregarded under the test for confusing similarity for the purposes of the Policy as it is viewed as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.

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.

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.

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.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark due to the Respondent's use of the disputed domain name to resolve to a PPC website generating links related to the Complainant's business and products, namely optical products. The Panel further notes that the fact that the MX records have been set up for the disputed domain name, and the fact that the Respondent apparently supplied inaccurate information for the Whois record in addition to utilizing a privacy service, all combined together are clear inference of bad faith registration and use of the disputed domain name.

Furthermore, panels have consistently found that the mere registration of a domain name that is almost identical (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4..

In the present case, the Panel notes that the Respondent's failure to respond to the Complainant's cease-and-desist letter and to contest the Complainant's assertions made in this proceeding regarding its bad faith in registering and using the disputed domain name is further inference of bad faith use and registration of the disputed domain name.

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 <affelou.net> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: March 28, 2024