

ADMINISTRATIVE PANEL DECISION

Francap Distribution v. Prisca Deco, Domain Privacy Trustee SA / Paul Do
Case No. D2024-2440

1. The Parties

The Complainant is Francap Distribution, France, represented by Cabinet Germain & Maureau, France.

The Respondents are Prisca Deco, Benin and Domain Privacy Trustee SA, Switzerland / Paul Do, France.

2. The Domain Names and Registrars

The disputed domain name <coccinellesupermarche.net> is registered with Tucows Inc. (the “First Registrar”).

The disputed domain name <coccinellesupermarche.site> is registered with Key-Systems GmbH (the “Second Registrar”).

The disputed domain name <supermarche-coccinelle.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the “Third Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2024. On June 14, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On June 14, 15, and 17, 2024, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, Domain Admin Whoisprotection.cc, and Domain Privacy Trustee SA, respectively) and contact information in the Complaint.

The Center sent an email communication to the Complainant on June 18, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or, alternatively, demonstrate that the underlying registrants are in fact the same entity or that all of the disputed domain names are under common control. The Complainant filed an amended Complaint on June 21, 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 Respondents of the Complaint, and the proceedings commenced on June 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 14, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on July 15, 2024.

On July 12, 2024, the Center received a communication from Infomaniak Network SA in connection with the disputed domain name <coccinellesupermarche.site> identifying itself as the hosting company for the disputed domain name. The Center replied on July 22, 2024. Infomaniak Network SA sent a registrar verification email on July 23, 2024, disclosing new registrant information, Paul Do. Key-Systems GmbH and Infomaniak Network SA were asked to clarify their relationship if any on July 30, 2024. Key-Systems GmbH confirmed that it is the registrar of the disputed domain name <coccinellesupermarche.site>. Infomaniak Network SA did not reply. On August 12, 2024, the Parties were informed of the new underlying registrant details received from Infomaniak Network SA and invited to comment. The Complainant sent a communication in this regard on August 12, 2024.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on September 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 group is a retail supermarket chain and distributor to independent retailers. Established in 1963, the Complainant is organized as a public limited company under French law and headquartered in Paris, France. The Complainant launched the COCCINELLE brand in 1986 (“Coccinelle” is French for “ladybug”), applied to “convenience and proximity” retail stores, some with restaurant services, and a wide range of products sold in them. The Complainant now operates more than 2200 stores in France and other countries, serving some 600,000 customers daily, in collaboration with eleven affiliated companies.

The Complainant holds relevant trademark registrations for COCCINELLE as a word mark or as the prominent textual element of a figurative mark, including the following:

Mark	Jurisdiction	Registration Number	Registration Date	Goods and/or Services
COCCINELLE (word)	France	1384105	August 14, 1985	International Classes (“IC”) 29, 30, 31, 32, 35, 39, 43; food and cleaning products, sales services, preparations for preserving and storing foods, cosmetics and hygiene products, electronic devices, textile products, housewares, games and sporting equipment, holiday decorations, restaurant services, etc,

COCCINELLE (word)	France	92441909	November 10, 1992	IC 3, 5, 8, 9, 11, 16, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 39, 43; cleaning preparations, cosmetics, electronic and photo devices, art materials, leather goods, luggage, decorations, food products, sales, distribution and transport services, travel services, restaurant services, etc.
COCCINELLE SUPERMARC HE (words and design)	France	3866892	October 14, 2011	IC 16, 35, 39, 43; paper and printed materials, etc., sales and advertising of goods and services including online sales), etc., transport and packaging, etc., restaurant services
COCCINELLE (word)	WIPO (multiple designations)	1665803	February 24, 2022	IC 35, 39, 43; retail services, etc., packaging of food products, restaurant services

The Complainant has been operating websites in connection with its business since March 2006, registering the following domain names: <coccimarket.eu> (2006), <coccinelle.eu> (2006), <coccimarket.fr> (2009), <coccinelle.fr> (2010), <coccinelle-supermarche.fr> (2011), <coccinelle-supermarche.com> (2011), <cocci-market.fr> (2012), and <coccimarket.com> (2012). The Complainant's principal website is published at "www.coccinelle-supermarche.com". The Complainant notes that "supermarché", French for "supermarket", is a term that describes the Complainant's larger retail stores. The term is spelled in the Complainant's trademarks and some of its domain names, as well as in the disputed domain names, without the accent over the final "e" as is common for URL addresses in ".com" and many other Top-Level Domains ("TLDs").

The information reported from the three Registrars (as recently updated) concerning the registration of the disputed domain names may be summarized as follows:

Disputed Domain Name	Creation Date	Registrant / Organization	Location	Contact Email
<supermarche-coccinelle.com>	April 18, 2024	"prisca deco", no organization listed	Benin	[...].@gmail.com
<coccinellesupermarche.net>	April 19, 2024	"prisca deco" (same name listed as organization)	Benin	[...].@gmail.com (same email address as for <supermarche- coccinelle.com>)
<coccinellesupermarche.site>	May 16, 2024	Domain Privacy Trustee SA	Switzerland	[...].@domainprivacyt rustee.ch

The Respondent Prisca Deco is not further identified, but the Complainant attaches WHOIS data showing that Prisca Deco registered other domain names using the same contact Gmail address, including <supermarche-coccinelle.com>.

At the time of this Decision, none of the disputed domain names resolves to an active website, and it does not appear that the disputed domain names <supermarche-coccinelle.com> or <coccinellesupermarche.site> have been associated with a website to date.

However, the Complainant attaches a screenshot dated May 17, 2024, showing that at that time the disputed domain name <coccinellesupermarche.net> resolved to a website that replicated the Complainant's principal website. The Complainant also attaches copies of posts and emails as evidence of a fraud scheme in which supposed job openings were advertised on the Indeed job listings website, purporting to be posted by the Complainant, using the disputed domain name <coccinellesupermarche.net> as the recruiter's website. The associated fake website lent credibility to the Indeed post. Applicants received an email telling them they had been hired and would be sent a check to establish their automatic deposits and employee discount account. They were instructed to deposit the check (which was fraudulent) into their personal bank account, keeping part as a hiring bonus and wiring the remainder (EUR 1000) back to the sender to cover administrative "opening fees". Of course, by the time the check was returned dishonored, the EUR 1000 wire transfer was already gone from the victim's bank account. The Complainant had the fraudulent job listings removed once it learned of the scam.

An attachment to the Complaint shows that the other two disputed domain names have been configured with email servers at their respective hosting services, but the record does not show that they have been used to date for fraudulent or phishing emails or imitative websites. After reporting the abuse of the disputed domain name <coccinellesupermarche.net> to the relevant Registrar and host, that disputed domain name was deactivated, as well as the disputed domain name <supermarche-coccinelle.com>, which was registered within two days of <coccinellesupermarche.net> and was originally hosted with the same hosting company. The Complainant was ultimately successful in having the third disputed domain name, <coccinellesupermarche.site>, deactivated, as well as four other domain names (not included in the current proceeding) that were registered in May 2024 composed of variations of the Complainant's registered COCCINELLE SUPERMARCHÉ or COCCI MARKET trademarks, typically configured for email use but not yet associated with active websites or else parked for Pay-Per-Click ("PPC") advertising.

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 names.

Notably, the Complainant contends that the disputed domain names are all confusingly similar to its registered COCCINELLE and COCCINELLE SUPERMARCHÉ marks, which the Respondent does not have permission to use. The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain names but appears to have registered and used them only in connection with "an intense scam campaign involving identity theft" in April and May 2024, allegedly consistent with prior illicit use of other domain names by the same Respondent (this last claim, however, is not well supported in the Complaint).

B. Respondents

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) and the respondent has no rights or legitimate interests in respect of the disputed domain name;
- (iii) and the disputed domain name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Preliminary Matter: Respondent Identity

As reported above, on July 12, 2024, an email was received from the web-hosting company, Infomaniak Network SA, disclosing “Paul Do” as the underlying registrant for the disputed domain name <cocinellesupermarche.site>. As indicated below, the Second Registrar did not identify the underlying registrant behind the disclosed privacy service for the disputed domain name <cocinellesupermarche.site>. The Panel notes that the privacy service disclosed for the disputed domain name <cocinellesupermarche.site> has an address that matches that of the web-hosting company, Infomaniak Network SA, in Geneva, Switzerland. Accordingly, there does appear to be a relationship between Infomaniak Network SA, the disputed domain name, the privacy service, and the underlying registrant disclosed, “Paul Do”.

Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.4.6, “a number of panels have also made reference to paragraph 3.7.7.3 of the ICANN Registrar Accreditation Agreement which states that a Whols-listed registrant (referred to as the “Registered Name Holder”) accepts liability for any use of the relevant domain name unless it timely discloses the contact information of any underlying beneficial registrant”.

Here, the Panel notes that the privacy service was copied on the Center’s notification of the Complaint dated June 24, 2024. However, the further disclosure was received only two days prior to the Response due date. While the Center provided another opportunity for comment from the Parties, including the newly disclosed “Paul Do”, no Response was received outside of the Complainant’s reply. Given that the disclosure was only two days prior to the Response due date, the Panel does not consider such further disclosure as “timely”. Further to the Panel’s consideration of consolidation below, the Panel believes this further disclosure also illustrates the Respondent’s bad faith intent to frustrate proceeding as this. Accordingly, the Panel will consider Domain Privacy Trustee SA / Paul Do as Respondents for purposes of this proceeding.

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules. In addressing the Complainant’s request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.11.2.

The disputed domain names’ registrants did not comment on the Complainant’s request. No Responses were submitted, and the Second Registrar did not identify the underlying registrant behind the domain privacy service used in registering the disputed domain name <cocinellesupermarche.site>. All three of the disputed domain names were registered within a short period of time, at a time when the Complainant was targeted with an imitative website, fraudulent job listings, and a fraudulent email scam. The Panel considers

it likely that the disputed domain name <coccinellesupermarche.site> is subject to common control with the other two disputed domain names. Further, the Panel notes that all disputed domain names were seemingly registered using incomplete or fake contact information, seeing as the Center's written communication could not be delivered to "Prisca Deco" and the Complainant has provided evidence noting inconsistencies in the information disclosed for "Paul Do". That being said, the common "PD" acronym seems too coincidental given the common targeting of the Complainant and thus suggests the use of pseudonyms or fake identities to frustrate notice of proceedings such as this.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

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 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy (here, the registered COCCINELLE word mark and the composite COCCINELLE SUPERMARCHE mark in which the words "Coccinelle Supermarche" are a dominant element). [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds both marks are recognizable within each of the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7, 1.10 (design elements).

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 names. 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 names such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (involving in the case of the disputed domain name <coccinellesupermarche.net> impersonation and fraud scheme) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Further, while the remaining disputed domain names have not been put to any active use, their composition reflects a unique composition

of two dictionary terms (“ladybug” and “supermarket”) that is identical (or nearly identical) to the Complainant’s COCCINELLE SUPERMARCHE trademark, which effectively impersonates the Complainant and cannot constitute fair use.

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 was clearly aware of the Complainant’s well-established marks, publishing a website copying the Complainant’s principal website and posting false job listings purporting to come from the Complainant. The disputed domain name <cocinellesupermarche.net> was used to misdirect Internet users for commercial gain by creating a likelihood of confusion with the Complainant’s marks, consistent with the example of bad faith given in the Policy, paragraph 4(b)(iv).

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.

Panels also have found that the non-use of a domain name, as is apparently the case to date with the other two disputed domain names, <supermarche-coccinelle.com> and <cocinellesupermarche.site>, would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant’s trademarks and the composition of the disputed domain names, particularly the combination of the dictionary words “coccinelle” and “supermarche”, and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy. This finding is reinforced by the proximate registration of multiple, similar disputed domain names and the targeting of the Complainant’s trademarks for impersonation and fraud scams, and by the Respondent’s failure to reply to the Complaint and its efforts to obscure its identity and change registrars and hosting services.

Panels have held that the use of a domain name for illegal activity, here including impersonation and fraud schemes with respect to the disputed domain name <cocinellesupermarche.net>, 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 names constitutes bad faith under the Policy.

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 names <cocinellesupermarche.net>, <cocinellesupermarche.site>, and <supermarche-coccinelle.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: September 18, 2024