

ADMINISTRATIVE PANEL DECISION

Puy du Fou France v. Daniel Nespereira
Case No. D2024-3361

1. The Parties

The Complainant is Puy du Fou France, France, represented by SafeBrands, France.

The Respondent is Daniel Nespereira, Spain.

2. The Domain Names and Registrar

The disputed domain names <puydufouuk.com> and <puydufouusa.com> is registered with IONOS SE IONOS SE (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 16, 2024. On August 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 19, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (1&1 Internet Limited and Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 22, 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 in English on August 26, 2024.

On August 22, 2024, the Center informed the parties, in Spanish and English, that the language of the registration agreement for the disputed domain names is Spanish. On August 22, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent objected to the Complainant’s request.

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”).

On August 30, 2024, Complainant requested the suspension of the proceeding, and the Notification of suspension was sent to the Parties on September 2, 2024. The Parties did not reach a settlement agreement, and the proceeding was reinstated on September 25, 2024.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2024. The Respondent answered the Center's notification on the same day with a communication to which he attached the Complainant's undertaking letter, which the Center acknowledged through its email communication to the Parties on September 27, 2024. The Respondent did not send any further communication to the Center. The Center informed the Parties about the commencement of panel appointment process on October 18, 2024.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on October 24, 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.

3.1 Language of the Proceedings

The Complaint was filed in English. The Complainant referred to a version of the Registration Agreement in made available on the Registrar's website in English. However, the Registrar, in its email communication sent to the Center on August 19, 2024, stated that the language of the Registration Agreement is Spanish.

In accordance with paragraph 11 of the Rules, the language of the proceedings is to be Spanish, unless otherwise agreed by the Parties, and subject to the Panel's decision, considering the circumstances of the case.

In its email communication sent to the Center on August 22, 2024, the Complainant requested English to be the language of the proceedings, arguing (i) that the Registration Agreement is written in English, (ii) that, at the time of filing of the Complaint, the disputed domain names resolved to parking pages displaying content in English, (iii) that the disputed domain names make reference to countries where English is spoken (the United Kingdom and the United States), (iv) that, when the Complainant contacted the Respondent, the Respondent replied in English, which leads the Complainant to believe that the Respondent is able to understand English and communicate in writing in said language, and (v) that, considering that both the Respondent and the Complainant understand English, the language of the proceedings should be English to avoid additional costs associated with translations.

The Respondent replied on August 23, 2024 to the Complainant's communication regarding the language of proceedings, indicating that he preferred that the proceedings be substantiated in Spanish, arguing (i) that the process of acquiring the disputed domain names was conducted in Spanish, including the emails that the Respondent received from the Registrar regarding the acquisition of said disputed domain names, (ii) that Spanish is the Respondent's native language and the only language in which the Respondent has a full proficiency, (iii) that the Respondent is a Spanish national and that Spanish is the official language of Spain, (iv) that the conversations with the Complainant were conducted in English because the Respondent did not have the possibility to change said language, (v) that, even though the Complainant has argued that the Respondent was able to understand English, the Respondent only has a minimum level of proficiency in said language, which fact hinders the Respondent's ability to understand certain terminology or vocabulary used in an extrajudicial claim, and (vi) that, considering that the Complainant's authorized representative has operations worldwide, it would be easier for said representative to conduct the proceedings in Spanish than for the Respondent to conduct the proceedings in English.

Therefore, there is no agreement between the Parties on the language of the proceedings.

The Panel notes that the Respondent answered to the Complainant's Prior Right Letters in English, and that he was able to understand the terms and conditions of the Complainant's Prior Right Letters, as well as to negotiate his own terms with the Complainant in English. On the other hand, the Respondent has chosen to

register domain names which alphanumeric strings target the jurisdictions/markets of the United Kingdom and the United States, where English is spoken. It is reasonable to presume that, should the Respondent have the intention to cause said domain names to resolve to corresponding web sites, the language of the content of said websites would likely be English.

The Complainant is a French entity. The Respondent is a Spanish individual. Considering the circumstances of the case, and that both Parties have corresponded with each other in English, and negotiated legal obligations in English, it is reasonable to infer that English is a neutral language which both Parties understand, and in which they are able to communicate.

Therefore, and in order to preserve the spirit of the Policy, which is to provide an agile, expeditious, and low-cost proceeding, the Panel decides that, in accordance with the powers granted under paragraph 11 of the Rules, the language of the proceedings shall be English (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

4. Factual Background

The Complainant is a French company which operates a historical themed leisure park located in Vendée, France.

Trademark	Registration No.	Jurisdiction	Date of Registration	Class
PUY DU FOU	006442461	European Union	February 3, 2009.	Class 35, Class 41 and Class 43.
PUY DU FOU PUYDUFOU 	3319451	France	October 20, 2004.	Class 3, Class 4, Class 8, Class 9, Class 11, Class 12, Class 13, Class 14, Class 15, Class 16, Class 18, Class 19, Class 20, Class 21, Class 22, Class 24, Class 25, Class 26, Class 28, Class 29, Class 30, Class 31, Class 32, Class 33, Class 34, Class 35, Class 38, Class 39, Class 40, Class 41, Class 42, Class 43 and Class 44.
PUY DU FOU	5993041	United States	February 25, 2020.	Class 41.

The Complainant is the owner of the following domain names <puydufou.com> (which resolves to the Complainant's official website), <puydufou.fr>, <puydufou.uk>, <puydufou.us>, <puydufou.info>, <puydufou.asia>, <hotelpuydufou.com> and <musiquepuydufou.com>.

The Respondent registered the disputed domain name <puydufouusa.com> on October 17, 2023, and the disputed domain name <puydufouuk.com> on April 20, 2024. At the time of writing this decision, the disputed domain name <puydufouusa.com> resolves to the Registrar's default parking page, while the disputed domain name <puydufouuk.com> does not resolve to an active website.

The Respondent and the Complainant engaged in negotiations through email communications starting on February 16, 2024. The Complainant tried to amicably resolve the present Complaint by offering the Respondent to acquire each disputed domain name for USD 100.00. The Respondent countered the Complainant's offer by asking for USD 250.00 per each disputed domain name, which was accepted by the Complainant on the condition that the Respondent signed an undertaking letter which included the Respondent's obligation not to use the Complainant's PUY DU FOU trademark or variants thereof as domain names, in the future. The Respondent crossed out this specific obligation stated in the undertaking letter, to which the Complainant responded that such deletion could not be accepted. Then, the Respondent asked for USD 3,000.00 to execute the Complainant's undertaking letter in its original terms. The negotiations ended.

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:

I. Identical or Confusingly Similar

That the Complainant owns several registrations for its PUY DU FOU trademark, alone or combined with other elements, particularly in France and the European Union, and that the Complainant owns several domain names comprising its PUY DU FOU trademark.

That the disputed domain names are a result of the combination of two English terms, specifically, the abbreviations of descriptive geographical terms of two countries: "UK" and "USA" (corresponding to the United Kingdom and the United States, respectively), plus the Complainant's PUY DU FOU trademark, and that the presence of said abbreviations rather than preventing the existence of likelihood of confusion between the disputed domain names and the Complainant's PUY DU FOU trademark, increases the risk of confusion, given the Complainant's involvement in initiatives and shows in the United Kingdom and the United States.

That the incorporation of the entirety of the Complainant's PUY DU FOU trademark in the disputed domain names is sufficient to establish confusing similarity, notwithstanding the addition of the abovementioned abbreviations of descriptive geographical terms (and cites the Rules paragraph 4 (a)(i), *Microsoft Corporation v. StepWeb*, WIPO Case No. [D2000-1500](#), *Wal-Mart Stores, Inc. v. Horoshiy, Inc.*, WIPO Case No. D2004-0620 and *General Electric Company v. Recruiters*, WIPO Case No. [D2007-0584](#)).

That the identical reproduction of the Complainant's well-known PUY DU FOU trademark in the disputed domain names is sufficient to establish infringement of the Complainant's PUY DU FOU trademark.

That the generic Top-Level Domain ".com" is not sufficient to prevent the confusing similarity between the disputed domain names and the Complainant's PUY DU FOU trademark (and cites *Columbia Insurance Company v. G Design*, WIPO Case No. [D2006-1617](#); and *Alliant Credit Union v. Mark Andreev*, WIPO Case No. [D2007-1085](#)).

II. Rights or Legitimate Interests

That the Respondent has no prior rights (such as trademarks or corporate names) or legitimate interests relating to the disputed domain names, and that the Respondent is not commonly known as "PUY DU FOU."

That the Respondent did not obtain any authorization from the Complainant to use its PUY DU FOU trademark, and that there is no relationship between the Complainant and the Respondent which could entitle the Respondent to use the Complainant's PUY DU FOU trademark (and cites *Comair Limited v. Ebrahim Kaskar*, *Shalimar* WIPO Case No. [D2016-1252](#)).

That the disputed domain names are not being used in connection with any bona fide sale of goods and services, because said disputed domain names resolve to the Registrar's sponsored parking pages (and cites *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)).

That, based on the Complainant's negotiations with the Respondent, Respondent had a speculative intent by registering the disputed domain names to obtain financial gain while taking advantage from the reputation of the Complainant's PUY DU FOU trademark, which cannot be considered as a bona fide offering of goods or services, nor a legitimate noncommercial fair use of the disputed domain names.

III. Registered and Used in Bad Faith

That, considering the Complainant's reputation, the distinctive use of its PUY DU FOU trademark for over 20 years, the fanciful nature of the PUY DU FOU brand, as well as the fact that the Complainant's leisure park has been the fourth most visited theme park in France in 2019, 2020, and 2022, the Respondent could not have ignored the existence of the Complainant's PUY DU FOU trademark at the time of registering the disputed domain names.

That the disputed domain names include the Complainant's PUY DU FOU widely known trademark, which registrations were obtained before the date of registration of the disputed domain names (and cites *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000- 0003, *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#) and [WIPO Overview 3.0](#) Section 3.1.4).

That the Respondent registered the disputed domain names using a proxy service to avoid being notified of the present Complaint, and that during the negotiations carried out between the Parties, the Respondent initially purported to have been acting on behalf of someone else, before acknowledging to actually being the owner of the disputed domain names, which supports a conclusion of bad faith registration (and cites [WIPO Overview 3.0](#) Section 3.0).

That the Respondent registered the disputed domain names to disrupt the Complainant's business by preventing the Complainant to develop its activity and freely use its PUY DU FOU trademark online (and cites [WIPO Overview 3.0](#) Section 3.0 and 3.1).

That the Respondent's communications regarding the negotiations with the Complainant by which the Respondent sought to receive USD 3,000.00 to settle the present Complaint is a clear sign that the Respondent registered and used the disputed domain names in bad faith.

That the MX servers of the disputed domain names have been activated, and that said servers could be used to operate email addresses, execute FTP access, and attract the Complainant's emails.

B. Respondent

The Respondent sent the abovementioned email communications relating to the language of the proceedings, and to which he attached the Complainant's undertaking letter, where the Respondent agreed to transfer the disputed domain names. These communications do not constitute a formal response.

6. Discussion and Findings

Paragraph 4(a) of the Policy sets out the three requirements that the Complainants must prove in order to successfully request remedies:

- (i) that the disputed domain names are identical or confusingly similar to a trademark or service mark to which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in connection to the disputed domain names; and
- (iii) that the disputed domain names have been registered and are 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 names. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the PUY DU FOU trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain names are confusingly similar to the Complainant's PUY DU FOU trademark because they reproduce said trademark entirely (see [WIPO Overview 3.0](#), section 1.7), and because the incorporation of references to the abbreviations of the geographical terms "uk" and "usa" respectively, do not prevent a finding of confusing similarity. The Complainant's PUY DU FOU trademark is recognizable in the disputed domain names (see [WIPO Overview 3.0](#), section 1.8; see *Playboy Enterprises International, Inc. v. Zeynel Demirtas*, WIPO Case No. [D2007-0768](#); *InfoSpace.com, Inc. v. Hari Prakash*, WIPO Case No. [D2000-0076](#); *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) and *Six Continents Hotels, Inc., Inter-Continental Hotels Corporation v. South East Asia Tours*, WIPO Case No. [D2004-0388](#))

The addition of the generic Top-Level Domain ("gTLD") ".com" to the disputed domain names constitutes a technical requirement of the Domain Name System ("DNS"). Thus, it has no legal significance in assessing identity or confusing similarity in the present case (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#)0268; *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#); and *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#) and [WIPO Overview 3.0](#), section 1.11.1.)

Accordingly, the disputed domain names are confusingly similar to the Complainant's PUY DU FOU trademark 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 to or legitimate interests in the disputed domain names. The Complainant has asserted that there is no evidence of the Respondent's use of the disputed domain names in connection with a bona fide offering of goods or services, and that the Respondent has not been licensed or otherwise permitted by the Complainant to use its PUY DU FOU trademark, or to register the disputed domain names (see *Amdocs Development Ltd. and Amdocs Software Systems Ltd. v. cenk erdogan*, WIPO Case No. [D2023-3044](#); *Amdocs Development Ltd. and Amdocs Software Systems Ltd. v. Nick Lamba*, WIPO Case No. [D2023-2573](#) and *Autodesk, Inc. v. Brian Byrne, meshIP, LLC*, WIPO Case No. [D2017-0191](#)). The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights to or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The case file contains no evidence that demonstrates that the Respondent has used or has made demonstrable preparations to use the disputed domain names in connection with a bona fide offering of goods or services (see *Valentino S.p.A. v. Qiu Yufeng, Li Lianye*, WIPO Case No. [D2016-1747](#); and *Associated Newspapers Limited v. Manjeet Singh*, WIPO Case No. [D2019-2914](#)).

Furthermore, the Panel considers that the composition of the disputed domain names carries a high risk of implied affiliation with the Complainant and its trademarks. [WIPO Overview 3.0](#), section 2.5.1.

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.

The Panel notes that the dates of registration of the Complainant's PUY DU FOU trademark significantly precede the date of registration of the disputed domain names.

In the present case, the Panel notes that the Respondent registered the disputed domain name <puydufouusa.com> on October 17, 2023, and the disputed domain name <puydufouuk.com> on April 20, 2024, well after the Complainant obtained its first registrations for its PUY DU FOU trademark and began using said mark. The Respondent's bad faith registration is evidenced by the fact that (1) the PUY DU FOU trademark is registered in several jurisdictions, including the European Union (which includes Spain, the country of nationality of the Respondent); (2) the disputed domain names are confusingly similar to the Complainant's PUY DU FOU trademark, as they incorporate it entirely; (3) the Complainant has submitted evidence of use of its PUY DU FOU trademark in the United Kingdom and the United States (the countries referenced by the "uk" and "usa" abbreviations contained in the disputed domain names) prior to the date of registration of the disputed domain names; and (4) the Respondent's conduct during his negotiations with the Complainant consisting of requesting a sum that well exceeds the normal out-of-pocket money relating to the registration of said disputed domain names, and refusing to undertake not to use the Complainant's PUY DU FOU trademark in similar domain names, supports a conclusion that the Respondent has targeted the Complainant, its business, and its PUY DU FOU trademark. This conduct constitutes opportunistic bad faith (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L'Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); and *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#)).

At the date of writing of this decision, the disputed domain names do not resolve to active websites. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or

reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing his identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put (see [WIPO Overview 3.0](#), section 3.3). Having reviewed the record, the Panel notes the distinctiveness, reputation, and widespread use of the Complainant's trademark, and the composition of the disputed domain names, and finds that under the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

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 names <puydufouuk.com> and <puydufouusa.com> be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: November 7, 2024