

ADMINISTRATIVE PANEL DECISION

Federation Francaise de Tennis (FFT) v. Whoisguard Protected, Whoisguard, Inc. / Sampath Reddy
Case No. D2016-0864

1. The Parties

The Complainant is Federation Francaise de Tennis (FFT) of Paris, France, represented by Nameshield, France.

The Respondent is Whoisguard Protected, Whoisguard, Inc. of Panama / Sampath Reddy of India.

2. The Domain Name and Registrar

The disputed domain name <frenchopen.live> is registered with eNom, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 29, 2016. On April 29, 2016, the Center transmitted, by email, to the Registrar a request for registrar verification in connection with the disputed domain name. On May 2, 2016, 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 and contact information in the Complaint. The Center, in turn, sent an email communication to the Complainant on May 9, 2016 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 May 9, 2016.

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"), 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"). Henceforth, all references to the Complaint will be to the amended Complaint, unless a specific reference expressly indicates otherwise.

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint and that the proceeding commenced on May 18, 2016. On June 7, 2016, the Respondent requested an extension of the due date to file its Response. In accordance with the Rules, paragraph 5(b), the Center extended the due date for Response to June 11, 2016. The Respondent sent emails to the Center on May 9, 10 and 11, 2016. The Respondent did not however submit any formal response.

Accordingly, the Center notified the parties about the commencement of panel appointment process on June 13, 2016.

The Center appointed Peter L. Michaelson as the sole panelist in this matter on June 17, 2016. 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

As reflected in the registration record for the disputed domain name in the Whois database (a copy of the record appears in Annex 1 to the Complaint), the disputed domain name <frenchopen.live> was registered on February 11, 2016 and is due to expire on February 11, 2017.

A. The Complainant's FRENCH OPEN Marks

As listed in Annex 4 to the Complaint, the Complainant owns two registrations (one International and the other European) for the mark FRENCH OPEN, either by itself or in conjunction with other terms, in block letter form, for which the Complainant has provided copies of these registrations in that Annex. Salient details of these marks are as follows:

- 1) FRENCH OPEN
International trademark registration 538170; registration date: June 22, 1989

This mark was registered for various toiletry and beauty related goods in international class 3.

- 2) ROLAND GARROS FRENCH OPEN
European trademark registration 003498276; registration date: January 12, 2006

This mark was registered for various goods and services in international classes 3, 6, 9, 12, 14, 16, 18, 24, 25, 28, 30, 32, 33, 35, 36, 37, 38, 41, 42 and 43 of which the following recited services, listed in class 41, are particularly relevant here: "sporting and cultural events provided online from a computer database or the Internet or from any other means".

B. The Parties and Their Activities

The Complainant, founded in 1920, promotes, organizes and develops tennis in France. Currently, it has approximately 1.1 million licensees.

The Complainant also represents France in international meetings regarding tennis and organizes major tennis tournaments such as the International of France (also known, in the English-speaking world, as the "French Open") at the Roland Garros Stadium in Paris. This tournament is the largest tournament, which is played on clay courts, of the tennis season and is the only one still competing on clay. Since 1968, which was the first year of the "Open" era, the French Open has been one of a series of the so-called "Grand Slam" events and is the second one in that series after the Australian Open in January.

The Complainant also sells the television rights to broadcast the whole "French Open" tournament to selected official and exclusive broadcasters all around the world, including in France, Europe, the United States of America and elsewhere (as enumerated in Annex 3 to the Complaint).

The Complainant has also registered various domain names which incorporate the mark FRENCH OPEN, including <frenchopen.com> (Whois records for those domain names appear in Annex 5 to the Complaint).

Prior to being notified of the present complaint, the Respondent used the disputed domain name to resolve to its website which displayed the Complainant's mark FRENCH OPEN and offered to live stream the "French Open Live 2016" from the Roland Garros Stadium to Internet viewers, through links provided on the site to streaming servers that were not yet operational (a screen shot of the home page of that site appears in Annex 7 to the Complaint). Specifically, the home page states, in bold font as a section heading: "How to Watch French Open 2016 Live Streaming and its Benefits" and in the following paragraphs:

"If you are planning to watch the French open 2016 tournament then you don't have to go anywhere as you can easily watch full matches here. There are many websites that claim that they show you the best live streaming matches but they usually have multiple advertisements that will ruin the enjoyment of the match. Also, you may face difficulty in getting smooth videos with high quality. But there we will show you the best live streaming videos.

The first and the foremost benefit of watching French open live 2016 streaming video is that you don't have to miss the comfort of your home and you can easily enjoy the homemade recipe along with the match. You can even call your friends and give them a treat at very low expenses because you don't have to buy tickets nor you have to buy foods or drinks that are available at higher prices on the stadium.

Stay Tuned with us to Watch out the complete Live Streaming French Open Live 2016."

On April 1, 2016, the Complainant sent, by email, a cease-and-desist letter to the Respondent requesting transfer of the disputed domain name <frenchopen.live> (a copy of this letter appears in Annex 6 to the Complaint). The Respondent did not respond to the letter.

Shortly after being notified of this dispute by the Center, the Respondent ceased using the disputed domain name in conjunction with its website concerning the 2016 French Open tournament and instead now uses it to forward Internet users to a site entitled "Wimbledon Live", at the domain name <wimbledonlive.net>, which provides information to those users on streaming live content from the 2016 Wimbledon tennis matches.

5. Parties' Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that the disputed domain name is identical to its mark FRENCH OPEN.

Specifically, the disputed domain name contains the mark in its entirety to which the generic Top-Level Domain ("gTLD") ".live" has been appended, with the gTLD being ignored for purposes of assessing whether a domain name is either identical or confusingly similar to a mark.

Moreover, here, the use of the ".live" gTLD intensifies rather than alleviates user confusion. It is rather conceivable that Internet users who seek information from the Complainant on live streaming the French Open tournament would very likely form a domain name by simply adding the gTLD ".live" to the mark FRENCH OPEN. In that regard, the registry for the ".live" gTLD describes this gTLD as a web address that gives "live streaming and digital events a memorable and easy to find location for live events". Hence, those users who formed such an address and entered it into their browsers intent on reaching the Complainant's website or a website sanctioned, in some manner, by the Complainant would, in fact, have reached the Respondent's site instead which is unrelated to the Complainant.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends that, for various reasons, the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

Specifically, despite the Respondent's use of the Complainant's marks, the Respondent is not affiliated or connected with the Complainant and has never been licensed or authorized to use any of the Complainant's marks. Moreover, the Respondent's website did not contain any disclaimer expressly stating that the parties are unaffiliated.

Further, the main page of the website at the disputed domain name <frenchopen.live> provided information on live streaming of the tournament through web links that were labelled with the terms "French Open Live 2016" and "Roland Garros Live Streaming". As the Complainant exclusively restricts broadcasting of the French Open tennis tournament to certain broadcasters located around the world, the Respondent is not amongst those which the Complainant has granted any broadcast rights and thus is not authorized to broadcast the tournament, whether by live streaming or other means.

(iii) Registered and Used in Bad Faith

The Complainant also contends that the Respondent has registered and is using the disputed domain name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

There can be no doubt that the Respondent was well aware of the reputation and goodwill inherent in the Complainant's mark FRENCH OPEN when the Respondent intentionally registered the disputed domain name – a name which is identical to that mark.

Yet, in spite of that knowledge, the Respondent, through use of the disputed domain name, is deliberately creating a likelihood of confusion, in the minds of Internet users, by suggesting that a connection, affiliation or association exists between the parties when, in fact, no such relationship exists at all, and consequently is relying on that confusion to intentionally divert, Internet traffic destined to the Complainant's website to the Respondent's website instead. By doing so, the Respondent is financially benefitting through its offering of false tickets and provision of links to unauthorized streaming sources.

B. Respondent

Beyond requesting an extension of the Response due date, the Respondent has not taken part in this proceeding. In view of the lack of a formal Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual representations.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is identical to the Complainant's marks.

From simply comparing the disputed domain name to the mark FRENCH OPEN, no doubt exists that the disputed domain name is identical to the mark. The only difference between the two is the addition of the ".live" TLD to that mark to form the disputed domain name, with that addition being irrelevant in assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy and thus typically ignored. See, e.g., *Audi AG, Automobili Lamborghini Holding S.p.A., Skoda Auto a.s., Volkswagen AG v. JUS TIN Pty Ltd.*, WIPO Case No. D2015-0827.

Thus, the Panel finds that the disputed domain name is identical to the Complainant's mark FRENCH OPEN. Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim of rights or legitimate interests by the Respondent to the disputed domain name under paragraph 4(c) of the Policy.

The Complainant has never authorized the Respondent to utilize the Complainant's mark FRENCH OPEN nor does the Complainant have any relationship, affiliation or connection whatsoever with the Respondent.

There can simply be no question that the Respondent was well aware of the Complainant, its FRENCH OPEN marks and the Complainant's exclusive rights in those marks, and the substantial reputation of and the goodwill inherent in those marks when the Respondent registered the disputed domain name – a name which is identical to the mark. Yet, in spite of that knowledge, the Respondent intentionally registered the disputed domain name and used it as a vehicle to intentionally deceive Internet users into believing that a relationship of some sort existed between the parties when it does not, and thereby deliberately divert Internet traffic to its site and away from the Complainant's site. This, in turn, disrupted the Complainant's business, particularly by interfering with the exclusive broadcasting rights which the Complainant granted to various broadcasters worldwide but which did not include the Respondent, and thus illicitly diverting viewership away from some of those broadcasters.

The record before the Panel is simply devoid of any evidence which proves that the Respondent actually acquired any recognition in the marketplace to become commonly known by the disputed domain name or a name similar to it. Given the exclusive trademark rights that reside in the Complainant and the substantial reputation and widespread global recognition now inherent in its FRENCH OPEN marks both through registration and prior use, the Respondent could not legitimately acquire any public association between itself and the Complainant's marks or even any mark similar thereto, at least for the goods and services provided by the Complainant under its marks. This is so in light of the Complainant's exclusive trademark rights which predate the date, February 11, 2016, when the Respondent registered the disputed domain name. See, e.g., *Dubizzle Limited BVI v. Rana Anabtawi*, WIPO Case No. D2016-0843; *Philip Morris USA Inc. v. Daniele Kanai, iKiss LLC*, WIPO Case No. D2015-1527; and *Valero Energy Corporation and Valero Marketing and Supply Company v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID: 62520014085963*, WIPO Case No. D2015-0787. As such, the Respondent could not likely become commonly known by the disputed domain name or any of the Complainant's marks for any of the goods or services which are either identical or sufficiently similar to those listed on the Complainant's trademark registrations or with which the Complainant uses its marks without infringing on the exclusive trademark rights of the Complainant. Hence, the Respondent does not fall within paragraph 4(c)(ii) of the Policy.

Lastly, as the Respondent's illicit use of the disputed domain name clearly does not constitute either a noncommercial or fair use under paragraph 4(c)(iii) of the Policy.

As such, based on the evidence presently before the Panel, the Respondent does not fall within any of paragraphs 4(c)(i)-(iii) of the Policy. Also, there is simply no evidence that the Respondent has acquired, through any other means, any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name within paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use.

It is indisputable that the Respondent was well aware of the Complainant, its reputation and its FRENCH OPEN marks and the exclusive rights which the Complainant then had in those marks when the Respondent registered the disputed domain name. Yet, in spite of that knowledge and in the absence of any authority to do so from the Complainant, the Respondent intentionally chose and registered the disputed domain name, which is identical to the mark FRENCH OPEN for its potential to cause confusion with those marks.

To opportunistically exploit that confusion, the Respondent then used the disputed domain name to address its website, which displayed the Complainant's mark FRENCH OPEN and offered unauthorized live streaming broadcast services of that tournament, for the Respondent's own pecuniary benefit and to the detriment of the Complainant, including by selling illegitimate tickets and interfering with both exclusive broadcast rights of the tournament which the Complainant granted to various third-party broadcasters and the likely attendant viewership.

Though the Respondent recently ceased using the disputed domain name <frenchopen.live> to resolve to its prior website, the Respondent now uses the name to resolve to a website at <wimbledonlive.net> – presumably another one of the Respondent's websites – that provides information on streaming live content for a different tournament: the 2016 Wimbledon tennis tournament. Consequently, those Internet users who seek information on live streaming of the Complainant's FRENCH OPEN tournament and expect to reach a website associated or affiliated, in some fashion, with the Complainant from which they will access that information are instead intentionally diverted, by the Respondent's actions, to one associated with an entirely different tournament. Merely substituting one website for another, as the Respondent has done here, does not ameliorate the confusion. The Respondent is still exploiting the reputation and recognition of the Complainant's marks to illicitly drive traffic to its website. While the site itself and the corresponding content being provided are different than that which the Respondent previously used; the exploitation of user confusion and resulting diversion are not. The Respondent still commercially benefits from the diversion of Internet users to a content stream it provides, even though it is furnishing different content.

The Respondent does not escape liability under paragraph 4(b)(iv) of the Policy by merely substituting websites and content, as its creation and subsequent exploitation of user confusion for its own commercial gain has remained throughout.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations, with respect to the disputed domain name, to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant. The disputed domain name <frenchopen.live> is to be transferred to the Complainant.

Peter L. Michaelson
Sole Panelist
Date: July 1, 2016