



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

CHERIE FM v. Mr. Frank Sablon-Dauberton

Case No. D2003-0486

1. The Parties

The Complainant is CHERIE FM S.A.S. of Paris, France, represented by Ms. Morel, Vaïsse & Associés, France.

The Respondent is Mr. Frank Sablon-Dauberton, of Beverly Hills, California, United States of America.

2. The Domain Name and Registrar

The disputed domain name <cheriefm.info> is registered with Network Solutions, Inc., 21355 Ridgetop Circle, Dulles, VA 20160, United States of America.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 23, 2003. On June 24, 2003, the Center transmitted by email to Network Solutions, Inc. a request for registrar verification in connection with the domain name at issue (the "domain name").

On July 7, 2003, Network Solutions, Inc. transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the administrative, billing, and technical contact.

In response to a notification by the Center on July 8, 2003, that the Complaint was administratively deficient, the Complainant filed an amendment to the Complaint on July 10, 2003. The Center verified on July 16, 2003, that the Complaint, together with the amendment to the 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").

The Panel independently determines and agrees with the assessment of the Center that the Complaint is in formal compliance with the applicable requirements.

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 16, 2003. In accordance with the Rules, paragraph 5(a), the due date for Response was August 5, 2003. The Respondent failed to submit any response. Accordingly, the Center notified the Respondent's default on August 11, 2003.

The Center appointed Tobias H. Zuberbühler as the Sole Panelist in this matter on August 21, 2003. The Panel submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

On August 21, 2003, as well, the Center transmitted to the Parties a Notification of Appointment of the Administrative Panel and stating that the Projected Decision Date as of was September 4, 2003. The Panel finds that it was properly appointed and constituted in accordance with the Policy, the Rules, and the Supplemental Rules.

4. Factual Background

The following facts appear from the Complaint and its Annexes which have not been contested by the Respondent.

The Complainant is a Simplified Limited Liability Company (S.A.S.) resulting from a merger by acquisition of Cherie FM S.A.R.L. by Pacific FM S.A.R.L. The Complainant operates a radio station for women listeners all over France since 1987 with a total of 2,965,000 listeners per day. Moreover, the Complainant moreover is a member of the NRJ Group which holds various companies operating radio stations in France and other European countries.

The Complainant is the owner of a French semi-figurative trademark (registration number 1.622.753) "CHERIE FM", a French semi-figurative trademark (registration number 945.09.056) "CHERIE FM", an international semi-figurative trademark (registration number 566.104) "CHERIE FM", and an international semi-figurative trademark (registration number 623.854) "CHERIE FM".

The Complainant is the holder of the domain names <cheriefm.fr> and <cherie.fm> providing information and services related to the activities of the Complainant. The Complainant furthermore holds the domain names <cheriefm.com> and <chériefm.com> which were both transferred by the original registrants. The domain names <cheriefm.org> and <cheriefm.net> were ordered to be transferred to the Complainant by an Administrative Panel in the WIPO Administrative Panel Decision [Case No. D2002-0731](#). In addition, the Complainant has registered the domain names <cherie-fm.com>, <cherie-fm.fr>, <cheriefmpub.com>, <cheriefmpublicite.com>, <cheriefmregie.com>, and <cheriefm.tv>.

The disputed Domain Name, <cheriefm.info>, was registered by the Respondent on December 11, 2001. The domain name leads to a web page with the remark "under construction," containing no specific content as to the activities of the Respondent. A visit to the website by the Panel on August 30, 2003, showed that the website is now inactive, and one is directed to a Network Solutions, Inc. web page.

On June 27, 2002, the Complainant sent a cease and desist letter by registered mail and e-mail to the Respondent. The Respondent replied on August 5, 2003, stating that the Respondent's lawyers would contact the Complainant. The Respondent, however, neither had his lawyers contact the Complainant nor complied with the Complainant's cease and desist letter.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

- the domain name is identical or confusingly similar to trademarks in which the Complainant has rights; and
- the Respondent has no rights or legitimate interests in respect to of the domain name; and

- the domain name was registered and is being used in bad faith.

Additional respective contentions of the Complainant are included in the following discussions and findings.

B. Respondent

The Respondent has been notified in accordance with paragraph 2(a) of the Rules, but failed to submit a response in accordance with the requirements under the Policy. Thus, the Complainant's allegations are deemed to be uncontested.

6. Discussion and Findings

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

"(i) that the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

"(ii) that the Respondent has no rights or legitimate interests in respect of the domain name; and

"(iii) that the domain name has been registered and is being used in bad faith."

A. Identical or Confusingly Similar

The domain name at issue is <cheriefm.info>. As set forth above, the non-rebutted evidence has shown that the Complainant is the holder of various French and international semi-figurative trademarks "CHERIE FM". Although the above referenced trademarks are semi-figurative, quite obviously the domain name is substantially identical to the trademarks of the Complainant. The trademark is exactly copied in the domain name deviating only by the égu accent mark on the "e" of "chérie." It is well established that, in determining identity or confusing similarity of under pParagraph 4(a)(i) of the Policy, the generic top-level domain must be excluded from consideration ([WIPO Case No. D2001-0868](#)) and minor omissions of punctuation do not sufficiently alter the trademarked word to negate a finding of identity of confusing similarity ([WIPO Case No. D2000-0059](#)). This must also apply to the omission of an adjunct part of a letter, as with the French "égu"accent mark on an "e" letter, as in "chérie."

For these reasons, the domain name is held to be identical to the above referenced trademarks used by Complainant to market its services on the Internet.

The Panel thus holds that the Complainant has readily met the burden of proof as established by subparagraph (i) of the Policy's paragraph 4(a).

B. Rights or Legitimate Interests

According to paragraph 4(c) of the Policy, a Respondent may establish its rights or legitimate interests in the domain name, *inter alia*, by showing any of the following elements:

"(i) before any notice to you [Respondent] of the dispute, your [Respondent] use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

"(ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

"(iii) you [Respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Respondent has failed to demonstrate any use of, or demonstrable preparations to use, the domain name in connection with a *bona fide* offering of goods or services. The Respondent has also failed to present any proof that he, as an individual, business, or other organization, has been commonly known by the domain

name.

The Complainant asserts furthermore that the Respondent has no business or any other connection or affiliation with the Complainant. Therefore, there is no legal and/or business relationship between the Respondent and the Complainant which could give the Respondent any right, title, or share in the denomination "CHERIE FM".

Hence, in the absence of any indications as to a legitimate interest of the Respondent to use the domain name, the Panel finds that the Complainant has fulfilled its burden of proof under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The third element to be established by the Complainant is that the domain name has been registered and used in bad faith.

Paragraph 4(b) lays down the following four (non-exclusive) circumstances which, if found to be present by the Panel, are deemed to provide evidence of bad faith in registering and using the domain name:

"(i) circumstances indicating that you [Respondent] have registered or you [Respondent] have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark, or to a competitor of the Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

"(ii) you [Respondent] have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

"(iii) you [Respondent] have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

"(iv) by using the domain name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or your location."

The Complainant contends that the Respondent registered and used the domain name in bad faith.

WIPO UDRP cCase law has established that a passive holding of a domain name may, on its own, be sufficient to constitute bad faith registration and use, taking into account the overall context of the Respondent's behavior ([WIPO Case No. D2000-0003](#), [WIPO Case No. D2002-0686](#)).

The Complainant's trademarks are well-known in France and also among the francophone French speaking population outside of France. It is established that the Respondent's business is focused on French residents and the Respondent is familiar with France. By the time of registration, the Respondent must have known of one of the most well-known radio stations in France, and of its name and trademarks, and could not have ignored various domain name registrations by the Complainant with the distinctive terms of the Complainant's trademarks. Under these circumstances, any good faith use of the domain name by Respondent in the future is simply not conceivable.

Therefore, the Panel holds that the requirements under paragraph 4(a)(iii) of the Policy have been sufficiently made out by the Complainant and that the Respondent's bad faith registration and use of the domain name has been proven.

7. Decision

For all the foregoing reasons and facts discussed, the Panel concludes that the domain name is identical to the registered trademark in which the Complainant has rights, that the Respondent has no rights or legitimate

interests in respect of the domain name, and that the domain name has been registered and is being used in bad faith.

In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel therefore requires the domain name <cheriefm.info> to be transferred to the Complainant.

Tobias H. Zuberbühler
Sole Panelist

Dated: September 3, 2003