

Société Nationale des Chemins de Fer Français v. Anne Bromberger

Case No. D2009-0145

1. The Parties

The Complainant is Société Nationale des Chemins de Fer Français, Paris, France, represented by Cabinet Santarelli, France.

The Respondent is Anne Bromberger, Paris, France.

2. The Domain Name and Registrar

The disputed domain name <tgvm.com> is registered with Network Solutions, LLC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 3, 2009. On February 4, 2009, the Center transmitted by email to Network Solutions, LLC a request for registrar verification in connection with the disputed domain name. On February 14, 2009, Network Solutions, LLC 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 disputed domain name. The Center verified that the 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(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 13, 2009. In accordance with the Rules, paragraph 5(a), the due date for Response was March 5, 2009. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 6, 2009.

The Center appointed Alexandre Nappey as the sole panelist in this matter on March 17, 2009. 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 is the French State railway company, which operates the passenger railway system in France. TGV is the name for a high-speed train and related rail transport service adopted by the Complainant.

The Complainant has French and international registrations for the mark TGV. The Complainant’s trademark rights in France date back to August 17, 1978.

The Complainant also holds French registrations for the mark TGV MEDITERRANEE that date back to May 11 and September 6, 2000.

The Complainant is the registrant of various domain names including the mark TGV, notably <tgV.com>.

The disputed domain name was registered in February 21, 2001. It does not resolve to any website.

The Complainant sent a cease and desist letter to the Respondent on November 26, 2008 to request the assignment of the domain name at issue.

The Respondent, through her husband, replied by a formal letter of December 10, 2008, stating that the domain name had been registered on behalf and upon request of Mr. Bromberger. The latter is a journalist specialized in the field of transport, especially the French TGV Méditerranée about which he wrote some articles during the 1990s and in 2000. The disputed domain name was registered to make these papers available online. In the end it was never used to operate such a website.

The Respondent however claims that the choice of terms and the purely educational and informative subject of the domain name does not aim at infringing, and in any case could not infringe the trademark rights held by the Complainant. The Respondent offered the domain name for sale 1000 euros as a compensation to the costs incurred by the registration and the time consuming aspect of the proceedings.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its trademarks TGV and TGV MEDITERRANEE, taking into account furthermore the well-known character of the trademark TGV, as ruled in previous UDRP decisions which the Complainant refers to.

According to the Complainant, the Respondent has no right on the contested domain name, and that the Complainant did not license or otherwise permit the registration and use of such a domain name by the Respondent.

Finally, the Complainant asserts that the domain name has been registered in bad faith, the Respondent having prior knowledge of the well-known trademark TGV. The domain name is furthermore passively used in bad faith and the Respondent has attempted to sell the domain name to the Complainant to gain valuable consideration in excess of the out of pocket costs occurred to the Respondent.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions, except for the letter sent to the Complainant's counsel on December 10, 2008, whose statements are detailed above.

6. Discussion and Findings

Notwithstanding the default of the Respondent, it remains up to the Complainant to make out its case in accordance with paragraph 4(a) of the Policy, and to demonstrate that:

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

However, under paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the Panel “shall draw such inferences there from as it considers appropriate”.

Having considered the parties’ contentions, the Policy, Rules, Supplemental Rules and applicable substantive law, the Panel’s findings on each of the above cited elements are the following.

A. Identical or Confusingly Similar

The disputed domain name fully incorporates the Complainant’s registered trademark TGV. Whilst the domain name contains the suffix “med”, the likelihood of confusion is not thereby removed since the widely-known trademark TGV is incorporated into the domain name. As stated by the Complainant numerous panels have found confusingly similarity when a domain name fully incorporates a well-known trademark. See among others *Société Nationale des Chemins de fer Français v. Tang Zhiyan*, [WIPO Case No. D2008-1659](#) or *Credit Industriel et Commercial S.A., Banque Fédérative du Credit Mutuel v. Headwaters MB*, [WIPO Case No. D2008-1892](#).

Furthermore, the Panel notes that the Complainant holds rights in the trademark TGV MEDITERRANEE from which the domain name incorporates the first six letters in the same order. Taking into account that “med” is a French common abbreviation for the word “Méditerranée” (the French word for Mediterranean sea, bordering the French south coasts), the Panel finds that the domain name is confusingly similar with the Complainant’s trademarks.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out three illustrative circumstances as examples, which, if established by the Respondent, shall demonstrate its rights to or legitimate interests in the domain name for purposes of paragraph 4(a)(ii) of the Policy, *i.e.*:

- (i) Before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection to a *bona fide* offer of goods or services; or

(ii) The Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark; or

(iii) The Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

Even in considering the response informally sent by the Respondent to the Complainant prior to the filing of the present proceedings, the Panel cannot find any rights or legitimate interests of the Respondent with respect to the domain name.

Despite its informal assertions to the Complainant, the Respondent has not demonstrated any preparation to use the domain name to make the above-mentioned press articles available online.

On the record, it seems clear that the Respondent does not hold any rights in respect to the disputed domain name, is not commonly known by the domain name and is not making a legitimate noncommercial or fair use of the domain name, since it has indeed offered the domain name for sale at receipt of the formal notice sent by the Complainant.

Accordingly, and in the absence of a rebuttal by the Respondent, the Panel is satisfied that the Respondent has no rights or legitimate interests under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out the following four circumstances which, if found by the panel to be present, shall be evidence of bad faith registration and use:

(i) Registration for the primary purpose of selling, renting, or otherwise transferring the domain name to the Complainant who is the owner of the trademark or to a competitor of the Complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or

(ii) Registration for the purpose of preventing the owner of the trademark from reflecting the mark in a corresponding name, provided the Respondent has engaged in a pattern of such conduct;

(iii) Registration primarily for the purpose of disrupting the business of a competitor; or

(iv) Intentionally attempting, through the use of the domain name, to attract for commercial gain, Internet users to the website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, the sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

It can be inferred from its informal statements that the Respondent had prior knowledge of the Complainant, its widely known trademark and the services provided through the TGV MEDITERRANEE at the time she registered the domain name at issue.

The Panel, in accordance with previous UDRP decisions issued under the Policy, is of the opinion that actual knowledge of the Complainant's trademark and activities at the time of the registration of a disputed domain name may in certain circumstances (*inter alia* a complainant's trademark being widely known) be used to draw an inference of bad faith (see *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, [WIPO Case No. D2000-0226](#) and *Sony Kabushiki Kaisha (also trading as Sony Corporation) v. Inja, Kil*, [WIPO Case No. D2000-1409](#), which stated: “[i]t is inconceivable that the Respondent could make any active use of the disputed domain names without creating a false impression of association with the complainant. The Respondent was not authorized by the Complainant to use its mark nor any of the disputed domain names”).

The Panel notes that the Respondent has failed to demonstrate any preparation to use the domain name, or to rebut the Complainant's contentions, moreover, the Respondent offered to the Complainant the domain name for sale for valuable consideration in excess of its out-of-pocket costs.

The Panel finds in the circumstances in this case that the Respondent indeed registered the disputed domain name primarily for the purpose of selling it to the Complainant for an amount in excess of any documented out-of-pocket costs incurred by the Respondent. The Respondent's unsolicited offer to sell the domain name to the Complainant is further evidence of the Respondent's bad faith under paragraph 4(b) of the Policy.

Therefore the Panel finds that the domain name has been registered and is being used in bad faith.

7. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <tgvm.com> be transferred to the Complainant.

Alexandre Nappey
Sole Panelist

Dated: March 31, 2009