

Decision for dispute CAC-UDRP-103544

Case number	CAC-UDRP-103544
Time of filing	2021-02-02 10:18:32
Domain names	intersport-fr.com, fr-intersport.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	IIC-INTERSPORT International Corporation GmbH
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Complainant representative

Organization	Nameshield (Enora Millocheau)
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Respondent

Organization	Interfr
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of a number of trade marks, the longest established of which is 'INTERSPORT' (internationally protected with registration 210606, first registered 16 June 1958, in a large number of classes, on the basis of a mark registered under the law of the then Federal Republic of Germany), and other later marks (with a similar range of classes and designations) which use the same string in the context of various images.

FACTUAL BACKGROUND

The Complainant, a corporation with its seat in Bern, Switzerland, is a sporting goods retailer. It traces its roots to stores established in the 1920s, consolidated in the 1950s, and has operations directly or indirectly in multiple countries, across the world. It operates various websites of its own in connection with these retail activities, including at the domain name <INTERSPORT.COM> (registered 19 August 1998) and <INTERSPORT.FR>.

The Respondent 'Interfr', who has provided an address in Paris, France, registered the first of the disputed domain names on 14 January 2021. The Respondent 'InterSpoFR', who has provided an address in Geneve, France, registered the second of the disputed domain names on 17 January 2021. For further consideration of the Respondent(s) in the context of consolidation of

disputes, see Procedural Factors, below.

PARTIES CONTENTIONS

No administratively compliant response has been filed. A number of emails sent by the Provider were successfully relayed to the address(es) provided by the Respondent, but without response; the Respondent also never accessed the online platform.

The Complainant submits that all requirements of the Policy have been met and that the disputed domain names should be transferred to it. It points, in particular, to its established marks, and to the likelihood that the Respondent was aware of its activities and so preparing to use the disputed domain names in bad faith and without any relevant rights or legitimate interests.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

Disregarding the top-level domain .COM as is the established practice under the Policy, the disputed domain names each differ from the mark in which the Complainant has rights in the same respect - through the addition of the string 'FR'. One contains FR followed by a hyphen before the mark, while the other contains a hyphen followed by FR after the mark.

Noting that the string FR is utilised in the domain name system as the country code in respect of France (derived from the ISO list of codes), and that such reflects the familiar use of FR as an abbreviation for France in multiple contexts, the Panel does not hesitate in finding that there is - at least - confusing similarity with the Complainant's mark. In particular, the present dispute can be classified as one where a mark is accompanied by a geographical term (see WIPO Jurisprudential Overview, version 3.0, para 1.8) and so appropriate for a finding of confusing similarity. The Panel also notes that the Complainant has provided extensive evidence of its operations in France (alongside other territories), including but not limited to its operation of a website at the domain name <INTERSPORT.FR> and over 650 stores in France.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

The Respondent has not participated in the present proceedings, and the only information available from the website at the time of the Complaint ('to finish setting up your new web address go to your domain settings') is of no relevance. The Respondent claims to be known as 'Interfr' or as 'InterSpoFr' but there is no further information which would support the credibility of such a claim (especially in light of the Complainant's statement that the Respondent is neither affiliated with it nor has any licence or authorisation to use the name INTERSPORT).

While the Panel must be mindful of the possibility of rights or legitimate interests, especially in disputes where generic terms such as 'SPORT' or indeed geographic indicators are at issue, there is simply no plausible basis, on the facts available to the Panel, for further consideration of such a possibility.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

The Complainant points to the way in which it has coined and used the artificial term INTERSPORT in its business activities for many years, submitting that it is likely that the Respondent had the Complainant's mark in mind when registering the disputed domain names. This is a plausible submission and has not been contradicted by the Respondent in any way. The Panel also notes the decision of another Panel, cited in the Complaint, in WIPO Case No. D2019-0371, IIC INTERSPORT International Corporation GmbH v Michael Bogus, I.S.A. International Sport Arena & Hotel GmbH, where it was held that the Complainant's trade mark is 'widely known'.

Moreover, the fact that the 'placeholder' websites at the disputed domain names are associated with the 'Shopify' platform (which allows users to create e-commerce services without specific technical expertise) indicates that it is the Respondent's intention to begin trading at the disputed domain names. In the absence of (for instance) any clarification from the Respondent that it is engaged in reselling or the provision of reviews or other (potentially) lawful activity, the Panel can find the presence of bad faith. In particular, it is more likely than not that the Respondent is in the process of, in the terms of paragraph 4(b) of the Policy, intentionally attempting to attract, for commercial gain, Internet users to its website(s), by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website(s) or of a product of service on said website(s).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

The Complainant submits that the disputes regarding two domain names should be consolidated, on the grounds that the Respondent(s) have provided the same telephone number and used the same registrar, for domain names which are similar to one another (that is, the use of INTERSPORT and FR). The Panel also notes the close proximity in the timing of registration (within three days), and that the Provider sought to contact the Respondent(s) through the contact details supplied (which would have allowed, for instance, for a Respondent to argue that there was no connection between it and the Respondent in the other dispute).

The Panel recalls that paragraph 4(f) of the Policy empowers a Panel to consolidate, at its sole discretion, 'multiple disputes' between a Respondent and Complainant) and notes rule 10(e) of the UDRP Rules (in similar terms), and the absence of any further reference to consolidation in the Supplemental Rules of the Provider. Reference is made to the present Panel's own summary of relevant authorities (including the WIPO Jurisprudential Overview) and a range of CAC decisions, in CAC Case 103107 Intesa Sanpaolo v alberto porro, describing a range of factors taken into account including:

- (1) a similar pattern of behaviour in managing the disputed domain names,
- (2) similarities in contact details (in part or in full), and
- (3) factors relating to the names themselves.

Taking full account of the Complainant's submissions and the Respondent's failure to participate, the Panel exercises its discretion under paragraph 4(f) and allows for the disputes to be consolidated. References in this decision to 'Respondent' and to 'Respondents' are to be construed accordingly. The Panel proceeds on the basis that the disputed domain names are subject to common control, and that it would be fair and equitable to all parties to consolidate.

PRINCIPAL REASONS FOR THE DECISION

The reasons for the decision are as set out above. In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of either of the disputed domain names. On the other hand, it is clear that the Complainant has rights in respect of the trade mark INTERSPORT, and that the disputed domain names registered by the Respondent are both confusingly similar to this mark, with the only material difference being the addition of the descriptive or geographic term FR. In light of the evidence presented regarding the preparations to use the disputed domain names in connection with e-commerce (without any further explanation or justification) by the Respondent in this case, and the legal findings as set out above, the Panel can find that the disputed domain names were registered and are being used in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the UDRP have therefore been met, and the Panel orders that the disputed domain names be transferred to the Complainant. The Panel accepted the Complainant's request that disputes concerning two domain names be consolidated, finding that there is a sound basis for assuming common control and that it would be fair and equitable to consolidate in this way.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

- 1. **INTERSPORT-FR.COM:** Transferred
- 2. **FR-INTERSPORT.COM:** Transferred

PANELLISTS

Name	Prof Daithi Mac Sithigh
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DATE OF PANEL DECISION	2021-03-08
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Publish the Decision