

Why it is critical to provide sufficient evidence under ADR procedures for '.fr' domain names  
France - Hogan Lovells

Cybersquatting  
Internet issues  
Domain names

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- **AFNIC college denied transfer of '.fr' domain name consisting of complainant's name due to lack of evidence**
- **Complainant's statements that respondent had no legitimate interest or was acting in bad faith were not backed up**
- **Personality rights *per se* are not usually protected under most domain name ADR procedures**

In a recent decision under one of the French alternative dispute resolution (ADR) procedures, known as [Syreli](#), a college from the *Association Française pour le Nommage Internet en Coopération* (AFNIC, the French domain name registry) has denied the transfer of a domain name consisting of the name of the complainant under the country-code top-level domain (ccTLD) for France due to lack of evidence.

The complainant, referred to by AFNIC as Monsieur P for reasons of anonymity, was an individual living in France who was an artist.

The respondent, referred to by AFNIC as Monsieur A, was, according to the WHOIS records, listed as the registrant of a domain name that was identical to the first and last name of Monsieur P under the ccTLD for France, '.fr'.

The domain name was previously owned by the complainant and pointed to a website about his art, but was not renewed on time and was therefore registered by the respondent on August 4 2017. The respondent, who did not reply, pointed the domain name to a website selling clothes that the complainant alleged was fraudulent.

The Syreli procedure (standing for "*SYstème de Résolution de Litiges*", or dispute resolution system) is an ADR procedure available for '.fr' domain names administered by AFNIC. A similar procedure, the [PARL EXPERT](#) (standing for "*Procédure Alternative de Résolution des Litiges*", or ADR procedure) also exists but is administered by the World Intellectual Property Organisation and decided by an independent panel. Both mechanisms conform to the current French domain name legislation, as regulated by Articles L45-2 and L45-6 of the French Posts and Electronic Communications Code (*Code des postes et des communications électroniques* or CPCE).

To be successful under either of these procedures, a complainant must first demonstrate that it has standing (*intérêt à agir*) to file the complaint in accordance with Article L45-6 of the CPCE and, second, that (pursuant to Article L45-2 of the CPCE) the domain name:

1. is likely to disrupt public order or violate principles of morality, or infringe any rights protected by the French Constitution or by French law;
2. is likely to infringe IP rights or personality rights, unless the domain name holder has a legitimate interest in the domain name and is acting in good faith; or
3. is identical or similar to the name of the French Republic, of a local authority or group of local authorities, of a local or national institution or public service, unless the domain name holder has a legitimate interest and is acting in good faith.

In the Syreli case at hand, AFNIC's college found that, at the time of filing of the complaint, the domain name was identical to the complainant's first and last name. Therefore, it ruled that the complainant had standing to bring the complaint in accordance with Article L45-6 of the CPCE.

Turning to Article L45-2 of the CPCE, the complainant then argued that the case fell under 2. above and that the domain name was likely to infringe his personality rights. The college agreed, again on the basis that the domain name was identical to the complainant's name.

However, the college was unable to find that the respondent had no legitimate interest or was acting in bad faith because a number of the complainant's statements in this regard were not backed up by evidence. For example, the complainant asserted that his website at the domain name previously had around 400 views per month and was referred to on various documents, but no proof of this was provided. Similarly, the

complainant provided a screen capture of the website of the respondent and asserted that this was current, but it was undated. The complainant also asserted that the respondent's details on the website were false and that the relevant legal wording was absent, but again did not explain why.

Article II(vi)(b) of Part I of the Rules for ADR Procedures relating to the Syreli procedure provides:

*"The college rules on the claim exclusively in light of the deeds and supporting documents filed by both parties without conducting further research, in accordance with these rules and regulations, as provided for in the French Electronic Communications and Telecommunications Act."*

As a result, the college considered that the complainant had not provided enough evidence and denied the transfer of the domain name. However, it is worth noting that, whilst a denial under many other systems would leave the complainant in real difficulty, especially under the [Uniform Dispute Resolution Policy](#) (UDRP) where refiling is only possible in highly limited circumstances, under the Syreli procedure it is possible for complainants to refile cases and thus to supplement cases on the same facts with additional evidence where necessary. Under most systems, including the UDRP, complainants must get complainants right first time and cannot in effect have a second bite of the cherry.

This case therefore underlines that complainants must be very careful when filing complaints and provide sufficient evidence to support their claims under the French ADR procedures (whether Syreli or PARL EXPERT) as the college or panel will not perform independent research, contrary to the UDRP, where the panel has the ability to carry out independent research should it consider that such information would be useful to assess the case's merits and issue a decision, or to make a request to either party for an additional submission if anything is not clear. However, as referred to above, this no doubt relates to the fact that UDRP decisions are final (unless court proceedings are filed within 10 business days of the decision), whereas under the French ADR procedures, it is much easier to refile the same complaint with additional evidence in the event of a denial. This also perhaps highlights the difference between common and civil law systems, with the latter being more reliant on the submission of formal evidence.

It is also interesting to note that personality rights *per se* are not usually protected under most domain name ADR procedures. For instance, under the UDRP, an individual will succeed in recuperating their personal name only if they are able to prove that they possess either registered or unregistered trademark rights in it. On the contrary, under the Syreli procedure, an individual will only be required to provide identity documents in order to demonstrate that the disputed domain name is identical, almost identical or similar to his/her name. However, in all cases, complainants will still have to satisfy the other requirements of the Syreli procedure in order to obtain a transfer.

*Jane Seager and Hortense Le Dosseur, Hogan Lovells, Paris*

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