

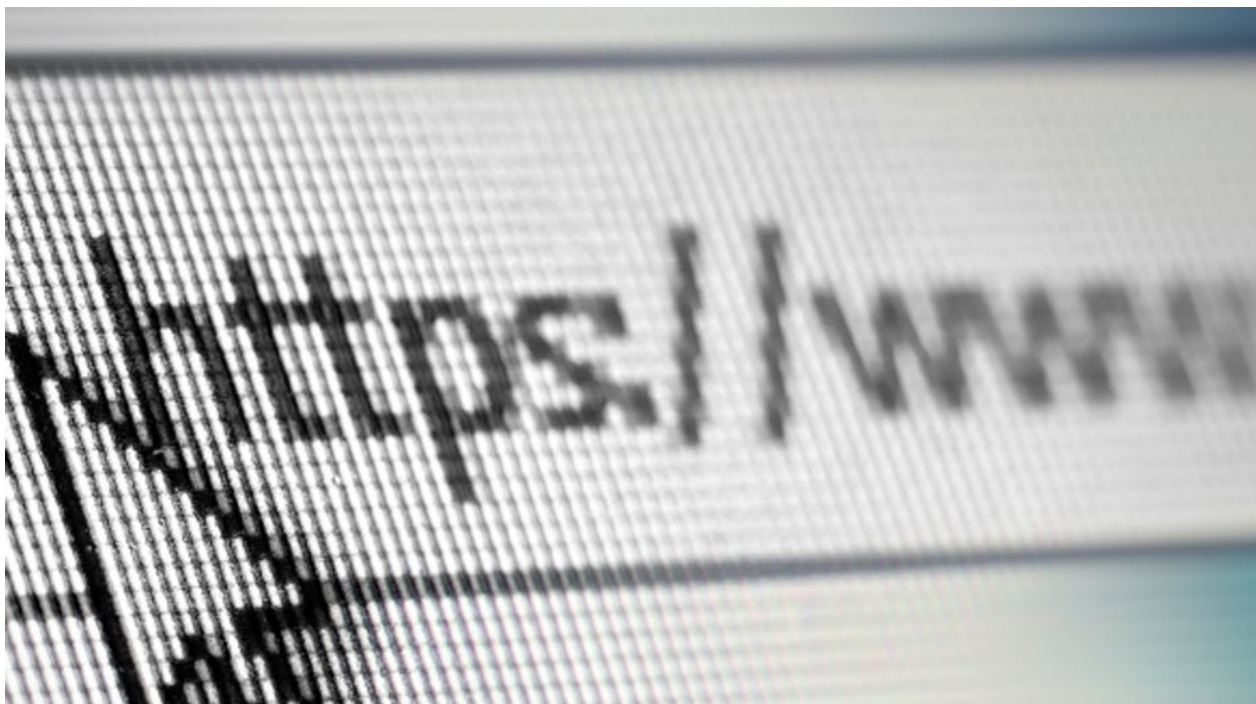


Complainant wastes time on 'anti-waste' domain name

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INTERNATIONAL

Legal updates: case law analysis and intelligence

- **Nous Epicerie Anti-Gaspi sought the transfer of the domain name 'antigaspi.co' under the UDRP**
- **The panel found that the complainant's unregistered trademark rights in NOUS ANTI-GASPI did not give it exclusive rights in ANTI-GASPI alone**
- **There was no evidence that the respondent was using the domain name with the intention of disrupting the complainant's business operations**

In a recent [decision](#) under the [Uniform Domain Name Dispute Resolution Policy](#) (UDRP) before WIPO, a panel has denied the transfer of the domain name 'antigaspi.co', finding that the term '*anti-gaspi*' (being an abbreviation of '*anti-gaspillage*', meaning 'anti-waste' in French) was a descriptive term that described the business of both the complainant and the respondent. While the panel found that the complainant had unregistered trademark rights for NOUS ANTI-GASPI, these unregistered rights did not confer upon it exclusive rights in the term '*anti-gaspi*' alone. In the absence of the dominant parts of the complainant's trademark in the disputed domain name, the panel found that the complainant's case failed under the second and third limbs of the UDRP.

Background

The complainant was Nous Epicerie Anti-Gaspi, a French company operating a chain of grocery stores under the name NOUS anti-gaspi. It was in the business of providing products that are not usually available via traditional distribution channels, such as perishable products that are close to their use-by date and fruit and vegetables that are an irregular size or shape.

The complainant owned a semi-figurative French trademark for NOUS EPICERIES ANTI-GASPI, assigned to it in 2018, and a French figurative trademark for LA TABLE ANTI-GASPI, registered on 13 April 2021.

The respondent was Jonathan Negrin, of 365 Good, a French company.

The respondent registered the domain name 'antigaspi.co' on 22 February 2022. The respondent was using the domain name to offer an identical business to the complainant, namely an online grocery service fighting against food waste.

To be successful in a complaint under the UDRP, a complainant must satisfy the following three requirements under Paragraph 4(a):

- (i) The domain name registered by the respondent is identical, or confusingly similar, to a trademark or service mark in which the complainant has rights;
- (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.

The complainant argued as follows:

1. In addition to its registered trademarks for NOUS EPICERIES ANTI-GASPI and LA TABLE ANTI-GASPI, it was the owner of unregistered trademark rights in NOUS ANTI-GASPI, as it was conducting its business via its website at its registered domain name 'nousantigaspi.com' and the packaging on its products bore this trade name.
2. The disputed domain name was confusingly similar to its registered and unregistered trademarks.
3. The respondent had no rights or legitimate interests in the disputed domain name.
4. By registering the disputed domain name, the respondent intended to take advantage of the complainant's activities rather than using the term '*anti-gaspi*' in the descriptive sense and, given the direct competition between the complainant and the respondent, registered and was using the disputed domain name in bad faith.

The respondent did not respond to the complaint.

Decision

Paragraph 4(a)(i)

The panel accepted that the complainant owned registered trademarks for NOUS EPICERIES ANTI-GASPI and LA TABLE ANTI-GASPI. The panel also accepted that the evidence provided was sufficient to establish that the complainant enjoyed unregistered trademark rights in the trade name NOUS anti-gaspi, which may form the basis of a UDRP claim and meet the test of Paragraph 4(a)(i) of the UDRP.

The panel noted that the disputed domain name, comprising the term '*anti-gaspi*' without a hyphen, under the extension '.co', formed part of the complainant's trademarks and, therefore, the complainant's trademarks and the domain name could be said to be similar.

However, the panel reserved judgement on the question of whether there was a risk of confusion between the domain name and the complainant's trademarks, given their descriptive nature in relation to the parties' activities, pending its analysis of the second and third elements of the UDRP.

Paragraph 4(a)(ii)

The panel found that the term '*anti-gaspi*', reflecting the disputed domain name, was a descriptive term for actions that aimed to combat or reduce waste, in particular food waste. The panel also noted that the website to which the disputed domain name resolved was an e-commerce site dedicated to the fight against food waste. As a result of the descriptive nature of the term '*anti-gaspi*', the panel found that the complainant had failed to demonstrate that the respondent had no rights or legitimate interests in the disputed domain name.

Paragraph 4(a)(iii)

Despite having found that the second limb was not satisfied, the panel proceeded to consider the third limb. Ultimately, the panel found no bad-faith registration or use of the domain name on the part of the respondent. In finding that the respondent had not registered the domain name in bad faith, the panel noted that the domain name did not include the complainant's unregistered trademark, NOUS ANTI-GASPI, in its entirety, but only the term '*anti-gaspi*', which it did not consider to be the dominant feature of the trademark. The panel again noted that '*anti-gaspi*' was a descriptive term that described the business activities of both parties and underlined that the complainant's unregistered trademark rights in NOUS ANTI-GASPI did not give it exclusive rights in ANTI-GASPI alone.

The panel also found that there was no evidence that the respondent was using the domain name with the intention of disrupting the complainant's business operations by creating a likelihood of confusion with the complainant's trademark, given that the distinctive element of the complainant's trademark was not present in the domain name. As a result, the panel concluded that the respondent had not registered or used the disputed domain name in bad faith.

In light of the complainant having failed to satisfy the second and third limbs, the panel dismissed the complaint and declined to order a transfer of the disputed domain name.

Comment

This case highlights the difficulties in relying on a trademark for the purposes of the UDRP if the part of the trademark that is included in the disputed domain name is purely descriptive and is the non-dominant part of the trademark. Ultimately, it also underlines the fact that the UDRP essentially remains a tool to combat cybersquatting and not to resolve more complex disputes where both parties appear to be conducting a genuine business.

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