

Q1 2015

Version #2

ADR Trends

Afnic alternative dispute resolution procedures

afnic

Foreword

In 2012, AFNIC issued for the first time a report on trends in the use of the SYRELI dispute resolution procedure.

It provided a wealth of information for anyone wanting to understand the key steps in a judicial review, how the procedure is managed, how to present a case or use evidence, and find benchmark decisions.

We are repeating the exercise this year, adding a few new features to our usual sections such as "News of the Month" focusing on a specific subject, or "Facts and figures", to get an idea of trend data.

You will notice that we have also changed the frequency of publication and the name: from now on, ADR trends will be quarterly and adopt the same analytical approach to future decisions handed down by ADR Experts.

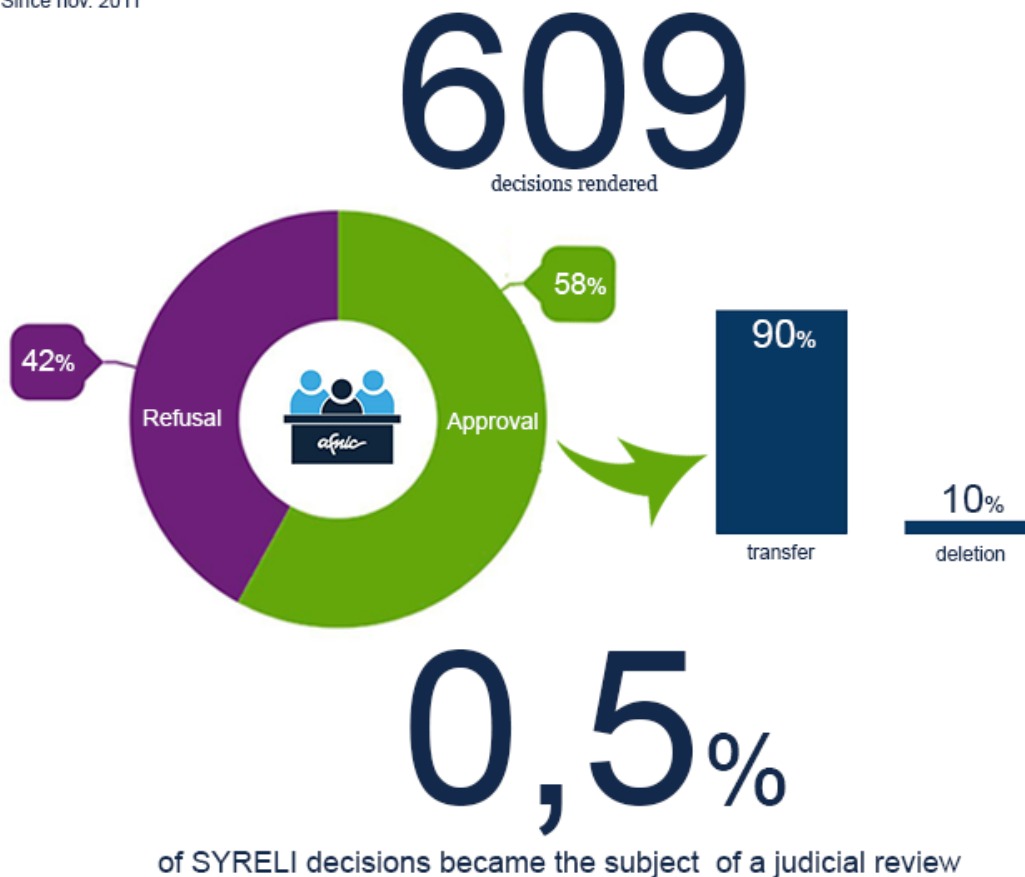
Read On!

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Facts and figures

Since nov. 2011



Domain name transfer or deletion rate following a Syreli decision

Since November 2011, the College has handed down 609 decisions.

In 58% of the cases, the College accepted the requested action:

- 90% of the motions to transfer the domain name
- 10% of the motions to delete the domain name



Statement on the powers of representation given by Claimants

Whatever the grounds for the claim, the Parties may be represented by any person(s) subject to the condition that, if the latter are not lawyers, they can prove their special power of representation.



Special case of Intellectual Property Counsel (IPC)

For any SYRELI case or Expert ADR procedure filed as of 20 January 2015 on the basis of Article L.45-2-2° of the French Electronic Communications and Telecommunications Act (CPCE), or more precisely on the grounds of intellectual property rights, Parties represented by an Intellectual Property Attorney are not required to prove their power of representation.

Grounds for a claim

Article L.45-2 of the French Electronic Communications and Telecommunications Act (CPCE)



Article L.45-2 paragraph 1 The domain name is liable to disrupt public order or morality, or the rights guaranteed by the French Constitution or French law;

Article L.45-2 paragraph 2 The domain name is liable to infringe intellectual property rights or personal rights, unless the Claimant provides proof of a legitimate interest and is acting in good faith;

Article L.45-2 paragraph 3 The domain name is identical or related to that of the French Republic, of a local authority or group of local authorities, of an institution or a local or national public service, unless the Claimant provides proof of a legitimate interest and is acting in good faith.



Any claim filed on grounds other than those set out in Article L.45-2 will be declared inadmissible by the College.



Benchmark decisions

1st Paragraph :

FR-2012-00045 logica-france.fr

FR-2012-00185 mutualité.fr

FR-2012-00236 cigarettes-enligne.fr

FR-2014-00744 iménager.fr

2nd Paragraph :

FR-2013-00374 chronospot.fr

FR-2013-00378 edouardcourtial.fr

3rd Paragraph :

FR-2012-00265 pharmaciens.fr

FR-2013-00362 la-rochelle.fr

FR-2014-00616 greffe-tc-lorient.fr

...

Completeness of the claim file



The Rapporteur ensures that

1. The application form is complete;
2. The costs of the proceedings have been paid;
3. The domain name has been registered;
4. The domain name is not subject to any judicial or out-of-court proceedings.

[if a complaint has been filed, it ensures that the latter explicitly addresses the domain name in question]



If the claim does not comply with any one of these items, it is rejected by the Rapporteur.



The Rapporteur does not verify the consistency of the documents filed by the Parties or their relevance to the arguments presented.



Benchmark decisions

Judicial or out-of-court proceedings in progress concerning the domain name in dispute:

FR-2012-00041 la-cote-argus.fr

FR-2012-00179 chimiderouil.fr

FR-00385 ifcdis.fr

FR-2014-00609 toujours-unis.fr

FR-2014-00679 le-boncoup.fr

FR-2014-00747 steico.fr

FR-2014-00768 atosho.fr

Judicial or out-of-court proceedings in progress not concerning the domain name in dispute:

FR-2014-00820 syndicat-portage-salarial.fr

Admissibility of documents



The College

1. Reserves the right not to accept documents provided in a foreign language;
2. Not to take into account documents submitted by hyperlink;
3. Not to take into account documents that are not usable;
4. Not to take into consideration arguments with no documents in proof.



There may be little evidence but it must be the **RIGHT** evidence!



Benchmark decisions

On the lack of documents in proof:

FR-2012-00081 chimiderouil.fr

On documents submitted by hyperlink:

FR-2014-00772 resilier.fr

FR-2014-00787 fragrancex.fr

FR-2014-00795 jacuzzi.fr

On documents provided in a foreign language:

FR-2014-00724 : balbcare.fr

FR-2014-00795 jacuzzi.fr

Claimant's right to bring action

Article L.45 of the French Electronic Communications and Telecommunications Act (CPCE):

"Any individual that has a valid reason for doing so may petition the competent registrar to delete or transfer a domain name for the individual's benefit when the domain name in question falls within the scope provided for in Article L. L.45-2 [...]."



The Claimant has a right to bring action if

1. It has an identical, virtually identical or similar domain name¹ under another TLD for the disputed domain name;
2. If it has a virtually identical or similar domain name¹ under the same TLD for the disputed domain name;
3. It holds a trademark¹, business name¹, surname or pseudonym, title of ownership¹ (work, patent, design and model etc.) that is similar, identical or virtually identical to the disputed domain name.

¹ No matter what the date of creation or registration.



In accordance with Article II.vi.b of the Regulations, the College does not carry out any further research.

Any claim submitted by a Claimant who does not substantiate his/her/its right to bring action, will be declared inadmissible by the College.



Benchmark decisions

Absence of right to bring action:

FR-2012-00163 natureo.fr

FR-2013-00469 pret-rachat.fr

FR-2014-00682 vinco.fr

Eligibility of Claimant



The Claimant is deemed to be non-eligible when

The latter is located outside the territory of a Member State of the European Union.



A domain name cannot be transferred to a Claimant that is ineligible under the naming policy of the .fr TLD, even though it may have a right to bring action.



The claim by a Claimant who is ineligible under the naming policy of the .fr TLD is admissible if

1. The Claimant requests the transfer of the domain name to one of its subsidiaries which is located in the territory of a Member State of the European Union, subject to the condition that it furnishes proof of a legal relationship with the Claimant;
2. The Claimant requests the deletion of the domain name.



Benchmark decisions

Ineligible Claimants:

FR-2011-00013 sonos.fr
FR-2012-00148 americaneagleoutfitters.fr
FR-2013-00539 missguided.fr
FR-2014-00662 katespade.fr
FR-2012-00119 yahoomag.fr

Claimants ineligible but claim admissible:

FR-2013-00405 broadsoftsas.fr
FR-2014-00604 missguided.fr
FR-2014-00787 fragrancex.fr

Agreement of Holder



The College takes note of the agreement of the Holder if and only if

1. The Claimant has a right to bring action;
2. The agreement of the Holder is explicit;
3. The agreement to transfer the domain name is to the benefit of the Claimant and not to that of a third party.

In the absence of any one of these provisions, the College continues to study the case considering that the Holder does not agree to transfer or delete the domain name.



Benchmark decisions

Agreement of Holder:

FR-2011-00001 infragenius.fr

FR-2012-00138 toppoffice.fr

FR-2013-00398 villedelyon.fr

FR-2014-00735 depetri.fr

Agreement of Holder to transfer the domain name to a third party:

FR-2012-00038 sportintown.fr

Agreement of Holder with no right of Claimant to bring action:

FR-2014-00606 tandm.fr

Non-explicit agreement of Holder:

FR-2013-00517 nilan.fr

Refusal or lack of reply from Holder



The College examines

1. The grounds on which the Claimant bases its claim:

- The domain name is liable to disrupt public order or morality, or the rights guaranteed by the French Constitution or French law (L.45-2-1°);
- The domain name is liable to infringe intellectual property rights or personal rights, unless the Claimant furnishes proof of a legitimate interest and is acting in good faith (L45-2-3°);
- The domain name is identical or related to that of the French Republic, of a local authority or group of local authorities, of an institution or a local or national public service, unless the Claimant furnishes proof of a legitimate interest and is acting in good faith (L45-2-3°).

2. The lack of any legitimate interest on behalf of the Holder, except in the cases provided for in Article L.45-2-1° of the French Electronic Communications and Telecommunications Act (CPCE);

3. The bad faith of the Holder, except in the cases provided for in Article L.45-2-1° of the French Electronic Communications and Telecommunications Act (CPCE).

Legitimate interest of the Holder

Article R.20-44-43 of the Decree of 1 august 2011



The Holder has a legitimate interest if

1. It uses the domain name (or demonstrates that it is prepared to do so) in connection with the offering of goods or services;
2. It is known by an identical name or one related to the domain name EVEN if it has NO right to do so;
3. It has used the domain name for non-commercial purposes:
 - without any intention to deceive the consumer,or
 - without damaging the reputation of the other name.



Non-exhaustive list!

The College then assesses the Holder's lack of good faith.

Whatever the circumstances, in the absence of legitimate interest, the College will grant the redress sought by the Claimant.



Benchmark decisions

Legitimate interest: Use of the domain name in connection with the offering of goods or services

FR-2012-00280 athena.fr

FR-2013-00386 uriage.fr

FR-2014-00698 immofrance.fr

Legitimate interest: Is known by an identical name or one related to the domain name

FR-2013-00397 publier.fr

FR-2014-00624 wedrive.fr

Absence of any legitimate interest on behalf of the Holder:

FR-2013-00378 edouardcourtial.fr

FR-2014-00643 coccinelle.fr

FR-2014-00657 univ-rennes.fr

FR-2014-00795 jacuzzi.fr

Holder's lack of good faith

Article R.20-44-43 of the Decree of 1 August 2011



The College has considered that the Holder is in bad faith if

1. It has obtained or requested the domain name primarily in order to sell, lease or transfer it and not to actually use it (see following pages);
2. It has obtained or requested the domain name in order to damage the reputation (see following pages) of the Claimant or of a product or service assimilated with that name;
3. It has obtained or requested the domain name primarily for the purpose of take advantage of the Claimant's reputation by creating confusion in the mind of the consumer (see following pages).



Non-exhaustive list!

Whatever the circumstances, if the Holder's lack of good faith is established, the College will grant the redress.

Other indications of evidence of a lack of good faith are taken into consideration by the College (see below).



Benchmark decisions

Domain name registered in order to disrupt business activities:

FR-2012-00221 reminiscence-bijoux.fr

Domain name registered to prevent its registration by a rights holder:

FR-2013-00476 leclerc-pharmacie-discount.fr

FR-2014-00626 centrenautique-saintdizier.fr

Bad faith established on the basis of a body of evidence:

FR-2012-00168 arena-bercy.fr

FR-2013-00442 pepejeanssoldes.fr

Bad faith

Interpretation of Article R.20-44-43 paragraph 1 of Decree of 1 août 2011



The College must

1. Determine if the Holder can furnish proof of operation of the domain name prior to its proposed sale
 - ⇒ If so, the criterion of a lack of good faith cannot be retained.
2. Consider whether the proposal to sell, lease or transfer the domain name is the main goal of the Holder
 - ⇒ If so, the criterion of a lack of good faith may be retained.



Benchmark decisions

Domain name registered primarily for the purpose of selling it:

FR-2012-00044 ibanque.fr

FR-2013-00348 téléstar.fr

FR-2014-00718 grosfillexfenetres.fr

Bad faith

Interpretation of Article R.20-44-43 paragraph 2 of Decree of 1 août 2011



The College must

1. Consider whether the domain name affects the goodwill of the Claimant OR that of an equivalent product or a service
 - ⇒ If so, the criterion of a lack of good faith may be retained.
2. Determine whether a prejudice may be caused in the minds of consumers (affecting product awareness, brand awareness, reputation of the Claimant, etc.).
 - ⇒ If so, the criterion of a lack of good faith may be retained.



Benchmark decisions

Domain name registered in order to damage the reputation of the Claimant or that of a product or service assimilated with that name:

FR-2012-00182 redbull.re

FR-2013-00443 etreenceinte.fr

FR-2014-00815 alexisdurand.fr

Bad faith

Interpretation of Article R.20-44-43 paragraph 3 of Decree of 1 août 2011



The College must

1. Determine whether the domain name benefits from the reputation of the Claimant or that of a product or service assimilated with its name

⇒ If so, the criterion of a lack of good faith may be retained.

2. Consider, on the basis of the documents in proof, whether the domain name creates a likelihood of confusion in the minds of consumers (product awareness, brand awareness, reputation of the Applicant, etc.)

⇒ If so, the criterion of a lack of good faith may be retained.



A French Holder cannot ignore the reputation of large companies located on French territory.



Benchmark decisions

Domain name registered primarily for the purpose of benefitting from the reputation of the Complainant by creating confusion in the minds of consumers:

FR-2012-00025 galerielafayette.fr

FR-2012-00130 vente-prive.fr

FR-2013-00315 elm-leblanc-sav.fr

FR-2014-00604 roissy-en-brie.fr

FR-2014-00696 swarovskibijoux.fr

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Must-read sections



SYRELI platform: www.syreli.fr

SYRELI decisions: www.syreli.fr/decisions

SYRELI statistics: www.syreli.fr/scope



Parl Expert platform:

Parl Expert decisions:

Parl Expert statistics:

**COMING
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Legal booklets : www.afnic.fr/ressources/litige

- [Guide for rights holders](#)
- [Booklet « Dispute resolutions made easy »](#)
- [Guide for domain name holders](#)

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SOON**