

Trends *Syrelì*
par afric

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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 any one of these elements is not complied with, the Rapporteur rejects the claim.

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



Benchmark decisions:

FR-2012-00041 la-cote-argus.fr: domain name subject to legal proceedings.

Claimant's right to bring action



The Claimant has a right to bring action if:

1. It has an identical, virtually identical or similar domain name¹ under another extension for the disputed domain name.
2. If it has a virtually identical or similar domain name¹ under the same extension 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.



If the Claimant does not possess any of these items, it has no right to bring action and the College rejects the claim.



Benchmark decisions:

Claimants with a right to bring action:

FR-2012-00049 decathlon.re: Identical trademark, domain names and trade name.

FR-2012-00117 adom-95.fr: Trade name and trademark almost identical.

FR-2012-00158 creditmutuele.fr: Similar trademarks and domain names.

Etc.

Claimants with no right to bring action:

FR-2011-00015 societe.fr: no document in proof.

FR-2012-00163 natureo.fr: trademark not held by Claimant.

Agreement of Holder



The College ensures that the Holder agrees to transfer the domain name to the Claimant and not to a third person

1. In cases where the agreement is given to the Claimant >> The College acknowledges this and hands down a decision to that effect, provided that the Claimant has a right to bring action.
2. In cases where approval is given to a third party >> The College indicates that it has learned of the Holder's agreement to transfer the domain name to a third person. The College considers that the Holder is not willing to transfer the domain name to the Claimant and continues to study the case.



Benchmark decisions:

Agreement of Holder + Claimant's right to bring action:

FR-2012-00109 elmleblanc-sav.f

FR-2012-00112 espaceampoule.fr

FR-2012-00063 mrs-bricolage.fr

FR-2012-00077 shosh.fr

FR-2012-00102 prospectusleclerc.fr

Etc.

*Agreement of Holder to transfer the domain name to a third party
+ Claimant's right to bring action:*

FR-2012-00038 sportintown.fr

Refusal or lack of reply from Holder



The College must:

1. State its position on the basis of the paragraph of Article L.45-2 to be taken into account (see page 7) >> If the Claimant bases its request on a specific point of Article L.45-2, the College will hand down its decision to that effect. If the Claimant does not refer to any particular point, the College will hand down its decision based on the paragraph of Article L.45-2 most appropriate for the case.
2. Consider the Holder's lack of legitimate interest (see page 8).
3. Consider the Holder's lack of good faith (see page 9).
4. Hand down its decision, which is enforceable within 15 days of its notification.

Article L.45 of the CPCE



1. The domain name is liable to disrupt public order or morality, or the rights guaranteed by the French Constitution or French law.
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 [pages 8 and 9].
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 [pages 8 and 9].



Benchmark decisions:

With respect to article L.45.2 paragraph 1:

FR-2012-00045 logica-france.fr

FR-2012-00078 cadware-systemes.fr

FR-2012-00135 csc-france.fr

With respect to article L.45.2 paragraph 2:

FR-2012-00050 century.fr

FR-2012-00080 ateliersdart.fr

FR-2012-00081 chimiderouil.fr

FR-2012-00103 daiwa.fr

FR-202-00127 dorcel.fr

FR-2012-00130 vente-prive.fr

FR-2012-00150 scooter-piaggio.fr

With respect to article L.45.2 paragraph 3:

FR-2012-00046 vivezsaintpierre.fr

FR-2012-00122 balma.f

Etc.

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 a name for which a right has been recognized or established.



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:

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

FR-2012-00122 balma.fr

FR-2012-00058 total-access.fr

FR-2012-00106 brasilhair.fr

Is known by an identical name or one related to the domain name, EVEN IN the ABSENCE of any right to do so.

No decision to date.

Non-commercial use of the domain name without any intention to deceive the consumer:

FR-2011-00011 leclerc.fr

FR-2012-00047 la-banquepostale.fr

Holder's lack of good faith

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



The Holder is acting 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 page 10).
2. It has obtained or requested the domain name in order to damage the reputation (see page 11) 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 page 12).



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.



Benchmark decisions:

Domain names obtained primarily in order to sell, lease or transfer it:

FR-2012-00055 sonos.fr

FR-2012-00147 print-carrier.fr

FR-2012-00155 eki.fr

Domain names obtained in order to damage the reputation of the Claimant or that of a product or service assimilated with the name.

No decision to date.

Domain names obtained in order to take advantage of the Claimant's reputation by creating confusion.

FR-2012-00031 paris-eiffel-tour.fr

FR-2012-00053 optic2000chezvous.fr

FR-2012-00124 creditmuteul.fr

FR-2012-00130 vente-privee.fr

Body of evidence allowing the College to assess the Holder's lack of good faith:

FR-2012-00019 credi-agricole.fr

FR-2012-00126 agenceprincipalegestion.fr

FR-2012-00168 arena-bercy.fr

Lack of good faith: assessment of paragraph 1 by the College



The College must:

1. Determine whether the Holder can substantiate use of the domain name prior to the 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 may be retained.



Benchmark decisions:

Use prior to the proposed sale:

Forthcoming

Proposed sale without prior exploitation

FR-2012-00044 [ibanque.fr](#)

FR-2012-00055 [sonos.fr](#)

Lack of good faith: assessment of paragraph 2 by the College



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 may be retained.
2. Determine whether the impairment may lie in the minds of the consumers (product awareness, brand awareness, reputation of the Claimant, etc.).



Benchmark decisions:

No decision handed down

Lack of good faith: assessment of paragraph 3 by the College



The college must:

1. Determine whether the domain name takes advantage of the Claimant's reputation OR an assimilated product or a service >> If so, the criterion may be retained.
2. Consider whether the domain name creates a likelihood of confusion in the minds of consumers (product awareness, brand awareness, reputation of the Claimant, etc.).



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



Benchmark decisions:

FR-2011-00012 **reductilacompliaxenic.fr**

FR-2012-00025 **galerielafayette.fr**

FR-2012-00028 **porno chic.fr**

FR-2012-00038 **yooda.fr**

FR-2012-00036 **mt dents.fr**

FR-2012-00031 **paris-eiffel-tour.fr**

FR-2012-00042 **conectis-france.fr**

FR-2012-00043 **nous libertins.fr**

FR-2012-00064 **leclerc location.fr**

FR-2012-00061 **allocation familiale.fr**

FR-2012-00113 **credit mutuel.fr**

FR-2012-00106 **brasil hair.fr**

FR-2012-00058 **total-access.fr**

FR-2012-00060 **www caf.fr**

Etc.

Eligibility of the Claimant



A Claimant not eligible under the naming policy cannot benefit from the transfer of a domain name but can benefit from its withdrawal.

FR-2012-00013 sonos.fr: However, the [Claimant] may request the transfer for the benefit of a company located in one of the territories eligible under the naming policy for the .fr TLD, provided that the company has a legal link with the Claimant company.

FR-2012-00119 yahoomag.fr

Proof of Holder's good faith



An explicit reference to the site to which the disputed domain name redirects, indicating that the aforementioned site is not official or distinct and without incurring any risk of confusion with the Claimant, is proof of the Holder's good faith, unless the activity of the Holder is a competitor in trade with that of the Claimant.

Screen pages



The screen pages provided by a bailiff or by the Claimant have the same weight for the College.

Proof:

All the arguments must be proven; if not, the College will reject the claim for lack of evidence.

FR-2012-00057 château-lagrezette.fr

Language of the Proceedings

If no document in proof or answer is translated into French, the College will refuse to consider the argument.

FR-2012-00120 licitor.fr

Reference addresses

La plateforme SYRELI: www.syreli.fr

Les statistiques SYRELI: [click here](#)

Le site web de l'Afnic: www.afnic.fr

Les décisions SYRELI: <http://www.syreli.fr/decisions>

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