Decision for dispute CAC-UDRP-100347

Case number	CAC-UDRP-100347
Time of filing	2011-12-01 19:22:34
Domain names	kasperski-lab.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	Kaspersky Lab Zao

Complainant representative

Organization	UDRPro, LLC

Respondent

Name	Mihail A Denin

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant has proved to own the following trademarks:

1.United States-registered trademark 2818639- word: KASPERSKY

Application date: April 6, 2000
Registration date: March 2, 2004

2.United States-registered trademark 2854174-KASPERSKY LAB

Application date: August 8, 2000
Registration date: June 15, 2004

3.United States-registered trademark 2756752-KASPERSKY K ANTI-VIRUS

Application date: October 19, 2000
Registration date: August 26, 2003

4.Community Trademark-registered Community trademark 001605955-KASPERSKY

Application date: April 7, 2000
Registration date: April 26, 2002

5.United Kingdom-registered trademark 2211806- word: KASPERSKY

Application date: October 19, 1999
Registration date: July 28, 2000 renewed on October 9, 2009

6. Australia-registered trademark 861846- KASPERSKY LAB

Application date: December 28, 2000
Registration date: October 11, 2001 renewed on August 12, 2010

Besides, the Complainant also owns the following domain names containing either the denomination KASPERSKY or KASPERSKY LAB:

<kaspersky.com>;<kasperskylab.com>;<kaspersky.co.uk>;<kaspersky.ru>;<kaspersky.me> and >kaspersky.eu>.

The bulk of these domain names are connected to the official web site of the Complainant.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Complainant is a company which has its headquarters located in Moscow. KASPERSKY is a Russian Company which is well-known worldwide for its know-how pertaining to anti-spam software. From its inception in 1997, the Company has been providing anti-spyware solutions and has developed a genuine expertise against computer malware. The Company is nearly present in every country all over the world and its solutions, which prevent viruses and other IT threats, are currently used by 300 million of users. According to records, 17000 employees are working within the Company in order to spread and promote the devices created by KASPERSKY. In 2009, the revenue of the Russian Company, which focused highly on R&D, was as high as $391 millions. As a result, KASPERSKY conjures up anti-spam software provided worldwide for Internet users.

Respondent registered the domain name <kasperski-lab.com> on November 14, 2011. The records of the Complainant show up that the domain name <kasperski-lab.com> is available on the auction website Sedo.

Therefore, the disputed domain name redirected the Internet users on the websites of third-parties which do not appear to be competitors of the Complainant. It occurred that Respondent derives benefits from the hyperlinks present on the website thanks to the pay-per-click system. The intention behind the Respondent's use of a domain name containing the Complainant's trademark is merely to capture the Complainant's customers who are seeking the Complainant's products.

The Complainant submitted the following documents to prove the abovementioned facts:

-Screenshot of the official website of KASPERSKY containing data about the Company
-Whois search conducted by Complainant
-Copies of Complainant's trademarks registrations
-Screenshot of the website Sedo
-Screenshot of the website http://www.kasperski-lab.com

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is 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).

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 Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

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.

PRINCIPAL REASONS FOR THE DECISION

1. Identity (paragraph 4(a)(i) of the Policy)

In the light of the documents provided by Complainant, it appears that it owns miscellaneous trademarks worldwide. Arguably, the Company KASPERSKY owns the international trademarks and Community trademarks comprising the term “KASPERSKY” or “KASPERSKY LAB” such as follows:

-United-States registered trademark n°2854174 KASPERSKY LAB registered on the 15th of June 2004 and renewed on October 9, 2010.
-Community registered trademark n°001605955, KASPERSKY registered on the 26th of April 2004 renewed on August 12, 2010.

The Administrative Panel found that the domain name <kasperski-lab.com> is confusingly similar to the trademark owned by Complainant.

Firstly, trademark of Complainant is entirely incorporated in the disputed domain name <kasperski-lab.com>. Secondly, while using the term “kasperski”, which is a misspelling of the trademark KASPERSKY, Respondent induces the Internet users into believing that they are on the official webpage of the famous anti-spyware software Company. Secondly, the addition of a hyphen does not prevent the similarity between the trademark of Complainant and the aforementioned domain name (WIPO Case No.D2008-2006, National Football League v. Online Marketing International also known as International Marketing Group).

2.Absence of Rights or Legitimate Interests (paragraph 4(a)(ii) of the Policy).

Complainant contended that Respondent has never been granted a license in order to register the domain name <kasperski-lab.com>. In addition, Respondent never sought the consent of Complainant in order to register the aforementioned domain name. Consequently, Respondent lacks any right or legitimate interest in using the litigated domain name.

The domain name in dispute is so similar to the well-known KASPERSKY LAB trademark that Respondent cannot reasonably pretend he was intending to develop a legitimate activity through the disputed domain name. Arguably, Respondent

registered said domain name knowing that the trademark benefited from a worldwide reputation. The time of the registration, namely in November 2011, is well posterior to the registration of KASPERSKY trademarks.

3.Bad Faith (paragraph 4(a)(iii) of the Policy).

In the light of the records, it seems that Respondent has registered the domain name <kasperski-lab.com> for the sole purpose of selling and renting the domain name to the Complainant or to third-parties.

It has been relentlessly held in previous cases that the fact to offer a domain name on an auction website gives some hints that the domain name has been registered in bad faith (WIPO Case No. D2000-0024, Easyjet Airline Company Ltd v. Andrew Steggles).

Furthermore, Respondent has merely changed one vowel of the trademark registered by Complainant. This sole change is prone to create a likelihood of confusion between the domain name of Respondent and the activities of Complainant. Complainant committed typosquatting that is an evidence either of registration or use in bad faith as it has been accepted in previous panel decisions (WIPO Case No. D2004-1069, Longs Drug Stores California, Inc v. Shop Dog; WIPO Case No. D2000-0377, General Electric Company v. Fisher Zvieli a/k/a Zvieli Fisher). The mere adjunction of a hyphen is not sufficient to circumvent the risk of confusion which can mislead Internet users.

Moreover, Respondent is likely to derive some revenue from its website which redirected Internet users thanks to hyperlinks on third-parties websites. Decisions issued by previous panels have held that the use of domain names to divert Internet users and to direct them to a webpage providing click through revenues to Respondent evidences bad faith. Indeed, Respondent is taking undue advantage of Complainant's trademark to generate profits. (WIPO Case No. D2008-0025 SNCF v. Comdot Internet Services Private Limited./PrivacyProtect.org and WIPO Case No. D2010-1805, Dun & Bradstreet Corporation v. Private Whois Service). Moreover, there is no indication of Respondent's own activities on the aforementioned website.

Lastly, the behavior of Respondent, which happens to conceal its identity during a certain amount of time, betrays the bad faith which motivated the registration of said domain name. The use of a privacy shield is not in itself constitutive of bad faith but combined with other elements, it may convey a finding of bad faith (WIPO Case No. D2009-0571, Jay Leno v. St. Kitts Registry, Domain Names Administration).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **KASPERSKI-LAB.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2012-01-06

Publish the Decision