Decision for dispute CAC-UDRP-100703

Case number	CAC-UDRP-100703
Time of filing	2013-11-12 12:07:38
Domain names	outiz.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	POINT P. S.A.

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	SARL INETCREW

OTHER LEGAL PROCEEDINGS

No other legal proceedings concerning the disputed domain names are currently pending.

IDENTIFICATION OF RIGHTS

The Complainant owns the French trademark n°3 999 026 containing the distinctive wording OUTIZ , dated 18 April 2013.

FACTUAL BACKGROUND

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

The Complainant asserts that the disputed domain name <outiz.com> is confusingly similar to its trademark OUTIZ. The disputed domain name contains the dominant trademark OUTIZ element.

The Complainant contends that the Respondent has no rights in connection with the term OUTIZ®. Indeed, the Respondent has no marks or trade name containing this term.

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 not 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

The domain name is confusingly similar to the trademark in which the Complainant has rights.

The Respondent has not submitted any reply. Therefore, it has submitted no information on possible rights or legitimate interests it might hold.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

“As mentioned above in section 3, the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed Domain Names, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists. WIPO Case No. D2002-0273 <sachsen-anhalt>; WIPO Case No. D2002-0521 <volvovehicles.com>”.

However, in the opinion of this Panel the Complainant has not managed to prove bad faith on the part of the Respondent in registering the domain name.

It is clear from the terms of paragraph 4(a)(iii) of the UDRP and confirmed by numerous decisions under it that the two elements of this third requirement are cumulative; both registration and use in bad faith must be proved for a complaint to succeed. See, for example, World Wrestling Federation Entertainment, Inc. v. Michael Bosman, WIPO Case No. D1999-0001, Telstra Computers Ltd v. Nuclear Marshmallows, WIPO Case No. D2000-0003 and A. Nattermann & Cie. GmbH and Sanofi-aventis v. Watson Pharmaceuticals, Inc., WIPO Case No. D2010-0800.

It is true that the passive holding of the domain name and the fact that the contact details have not been updated could be considered a sign of bad faith in the use of the domain name. However, the mark on which the Complainant relies in this case is of a much later date than the registration of the domain name by the Respondent. The domain name < outiz.com > has been registered on March 17th, 2008. Further, the Complainant has not submitted any evidentiary material from which it might be gathered that some relevant right or use existed at the time of that registration. Thus, in contrast with other cases where the complainants did have earlier trademarks (for example, Deutsche Kreditbank AG v. DKB Data Services (USA), Inc., WIPO Case No. D2009-1084), it is not possible to conclude that the Respondent acted in bad faith when registering the domain name.

The Panel therefore considers that it has not been proved that the third requirement, bad faith in the registration and use of the domain name, is met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **OUTIZ.COM**: Remaining with the Respondent

PANELLISTS

Name	**Mr. Luis H. de Larramendi**

DATE OF PANEL DECISION 2014-01-10

Publish the Decision