Decision for dispute CAC-UDRP-100799

Case number	CAC-UDRP-100799
Time of filing	2014-05-23 12:30:16
Domain names	TAXOFON.COM

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Geotra OÜ

Complainant representative

Organization	LASVET Patendibüroo OÜ

Respondent

Organization	Noorinet

OTHER LEGAL PROCEEDINGS

Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is, inter alia, proprietor of the registered Community trademark TAXOFON, CTM reg. No. 1119657.

FACTUAL BACKGROUND

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

1. Facts

The Complainant Geotra OÜ claims that it is the proprietor of European Community trademark TAXOFON (CTM reg. No. 1119657). The trademark enjoys legal protection as of 23/04/2012 with regard to services of Class 39, including taxi order- and reservation services.The Complainant furthermore states that it is the proprietor of TAXOFON International Trademark Registrations that designate USA and Turkey (IR reg. No. 1119657). These trademarks enjoy legal protection as of 23/04/2012 and with regard to the same services of Class 39, including taxi orders and reservation. The Complainant also claims to be the proprietor of Estonian national trademark registration TAXOFON (reg. No. 50976) which enjoys legal protection as of 23/04/2012 and for the services of Class 39 that the above marks cover.

The Complainant uses the TAXOFON trademark to designate taxi booking services inter alia as a smartphone app for Android and Apple devices, as well as a web-based platform.

The Respondent - Noorinet - has, on 15/08/2012 registered, and is the present holder of, the disputed domain name TAXOFON.COM.

The Respondent has and is continuing to make efforts to sell TAXOFON.COM. On http://taxofon.com/ it is noted “This domain name is for Sale”, “/.../ you can buy this domain showing this webpage if your price is ok.” The disputed domain name is also up for sale on Domaintools and Sedo. Using the latter website a representative of the Complainant has made 3 offers for TAXOFON.COM – 500, 600 and 728 EUR. The seller has made counteroffers in sums of 10 000 and 7000 EUR and thereafter cancelled the negotiations. The last asking price of 7000 EUR noticeably exceeds the registration, hosting, etc. usual fees connected with TAXOFON.COM. Additionally, the Complainant emphasizes that it should be noted that the TAXOFON trademarks were registered earlier than the disputed domain name.

The Complainant asserts that the Respondent has no relationship or authorization from the Complainant to use its TAXOFON trademark in the domain name TAXOFON.COM. Furthermore, the Respondent has not used or made any demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with bona fide offering of goods or services. The Respondent is basically passively holding the domain name with the aim offering it for sale – the only “product” on sale is the domain name itself. The Respondent is not commonly known by the domain name TAXOFON.COM, as though it were a trade name, name of the organization, etc. The Respondent is not making legitimate non-commercial or fair use of the domain name. The Complainant concludes that the respondent has no rights or legitimate interests in respect of TAXOFON.COM.

The Complainant contends that the Respondent has registered the domain name TAXOFON.COM primarily with the aim of offering and selling it to the Complainant (who inter alia uses the mark TAXOFON for its app), selling it to a competitor of the Complainant or other such person. There are no indications that the Respondent would have or would have had any other intentions but to sale the disputed domain name. The sums the Respondent has been asking from the Complainant via negotiations (minimum 7000 EUR) have been in excess of the normal out-of-pocket costs in registering, acquiring and/or holding the domain name. The Complainant concludes that the Respondent has registered and is using the domain name TAXOFON.COM in bad faith.

As to the language of the administrative proceeding, the Complainant claims that the Respondent Noorinet operates the website TAXOFON.COM mainly in English. In addition the Respondent offers to sell disputed domain name on the broker website Domaintools which is likewise in English. The disputed domain name is also for sale by the Respondent on the Sedo website which can be viewed in English but not Korean.

The Complainant asserts that the Respondent has no difficulties in comprehending and communicating in English as the Respondent has and is communicating in English (i.e. in offering the domain name for sale, in UDRP proceedings, etc.). The Complainant states that it would be difficult for the Respondent to object if English would be set as the language of these proceedings. Furthermore, circumstances of the case do not show that the use of English would bring any additional timely or monetary costs to either of the parties as English is understandable to both parties.

In light of all the above circumstances, taking into account the idea of fairness and justice to both parties, the Complainant asks for the Panel to let English be the language of the proceedings.

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

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.

In accordance with paragraph 11 of the Rules, the Panel can determine the language of the proceeding otherwise having regard to the circumstances of the case. Since the website the disputed domain name is referring to is also in English as in other cases where the Respondent was a Respondent (e.g. MSM Satellite Pte Ltd. and Multi Screen Media Private Limited v. Noorinet, Case No. D2014-0100), the Panel, having considered the circumstances of this case, determines that English is the language of the proceeding.

A person not being the Respondent, however, claiming to be a friend of the Respondent sent an email after the expiration of the deadline (the email was received 1/07/2014) to respond to the Provider. This email does not provide the evidence who this person is or whether he is authorized to answer on behalf of the Respondent or not. Also, in view of paragraph 8 of the Rules determining that the manner of the communication prescribed in the Provider´s Supplemental Rules shall apply and that in accordance with the respective CAC Supplementary Rules the communication with the Panel and the Provider must be realized via the CAC´s secured on-line platform accessible under the www.adr.eu, the email was accordingly not considered as administrative compliant Response.

PRINCIPAL REASONS FOR THE DECISION

A. Rights

The Complainant has established the fact that it has valid trademark rights for TAXOFON.

The Domain Name in its essential part, the SLD, is identical to the TAXOFON marks.

The Panel therefore considers the Domain Name in question to be confusingly similar to the trademarks TAXOFON in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has no rights in the Domain Name since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks. Furthermore, the Respondent has no legitimate interest in the Domain Name since there is no indication that the Respondent is commonly known by the name “TAXOFON” nor that the Respondent is using the Domain Name in connection with a bona fide offering of related goods or services.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

There is no other indication available than that the Respondent has registered the domain name TAXOFON.COM primarily with the aim of offering and selling it to the Complainant or to a competitor of the Complainant. The sums the Respondent has been asking from the Complainant have been in excess of usual out-of-pocket costs in registering, acquiring and/or

holding the domain name. Furthermore, as several UDRP decisions show, the Respondent is in the habit of registering and speculating in domain names that infringe earlier trademark rights.

The Panel therefore considers the Domain Name to have been registered and used in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TAXOFON.COM**: Transferred

PANELLISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2014-07-09

Publish the Decision