Decision for dispute CAC-UDRP-101268

Case number	CAC-UDRP-101268
Time of filing	2016-08-19 10:50:36
Domain names	ASCOMA.XYZ

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	ASCOMA ASSUREURS CONSEILS

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	GODADDY.COM, INC.

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings, pending or decided, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the trademarks “Ascoma” and “Ascoma Sante” in various countries including France (e.g. French word trademark “Ascoma” No. 3117201, registered on August 17, 2001). Both registrations are valid for class 36.

FACTUAL BACKGROUND

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

The Complainant is a company with its legal seat in Monaco. The Complainant is the 13th largest insurance general broker in France. It is an international and independent group with strong focus on the African market.

The Respondent registered the disputed domain name <ascoma.xyz> on June 01, 2016.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT'S CONTENTIONS:

I. Identity or confusing similarity

In reference to paragraph 4(a)(i) of the Policy the Complainant states that the disputed domain name <ascoma.xyz> is identical to its trademark “Ascoma” and confusingly similar to its trademark “Ascoma Sante”.

The Complainant contends that numerous prior Panels have stated that the fact, that the disputed domain name wholly incorporates the Complainant`s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP.

II. No rights or legitimate interests of the Respondent

The Complainant states the Respondent does not have any rights or legitimate interest in the domain name.

The Complainant contends that he does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant`s trademark, or apply for registration of the disputed domain name by the Complainant.

The Complainant further contends that the domain name points to an inactive website since its registration, which demonstrates a lack of legitimate interests in respect of the domain name (see WIPO case No. D2000-1164, Boeing Co. v. Bressi).

The Complainant contends that the Respondent has registered the disputed domain name with the sole aim to prevent him to register it and in order to create a likelihood of confusion with the Complainant`s trademarks.

III. Domain name has been registered and is being used in bad faith

The Complainant states, that the disputed domain name is identical with the Complainant`s trademark “Ascoma”. The Complainant further contends that “Ascoma” has no dictionary meaning of its own and therefore only links to the famous trademark of the Complainant. This gives rise to the inference that the Respondent might to have registered the disputed domain name for its trademark value.

According to the Complainant a Google-Search for the term “Ascoma” displays several results which are all related to the Complainant. Therefore, the Respondent must have been aware of the existing trademark of the Complainant at the time of registering the disputed domain name and therefore registered the domain name in bad faith.

Furthermore, the Complainant contends that the domain name links to an inactive website, so that no good faith use of the domain name could be determined.

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

I.
As the Respondent did not file an administratively compliant Response, pursuant to paragraph 14(b) of the Rules, the Panel may draw such inferences therefrom as it considers appropriate. The Panel may accept the contentions of the Complainant as admitted by the Respondent.

II.
The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to the Complainant`s trademarks (within the meaning of paragraph 4(a)(i)of the Policy).

The Panel agrees with the Complainant that the disputed domain name is identical to the Complainant`s trademark "Ascoma". The disputed domain name wholly incorporates the trademark “Ascoma”. The top level domain “.xyz” is to be neglected in this assessment.

III.
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).

No arguments, why the Respondent could have own rights or legitimate interests in the disputed domain name are at hand, particularly because the Complainant stated that the term “Ascoma” is a generated word with no dictionary meaning on its own other than being linked to the Complainant`s trademark. The Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in the disputed domain name.

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

The timing of the registration of the disputed domain name indicates the Respondent`s bad faith in registering such domain name, as, at that time, the Complainant was already known under the name “Ascoma Assureurs Conseils” and was owner of the trademarks “Ascoma” and "Ascoma Sante" in several countries. The Panel has no reason to disbelieve the Complainant when it argues that this coincidence has its roots in the fact that the Respondent knew the Complainant and its activities at the time of registration and sought to hinder the Complainant from registering the domain name itself.

As the term "ascoma" does not have a generic meaning, the Respondent may have wished to use for other reasons, it is evident that the Respondent must have known the Complainant and/or its trademarks. There is no evidence that the Respondent has registered the domain without reference to Complainant`s trademarks.

The Complainant further states, the concept of the domain names “being used in bad faith” is not limited to positive action, but rather incorporates inaction. At least in this case, where, according to the Complainant's undisputed contentions, "Ascoma" is a famous trademark, the Panel agrees. According to paragraph 4(b)(i) it shall be seen as evidence for bad faith use, if the Respondent registered the domain name in order to prevent the owner of the trademark from reflecting such mark in a corresponding domain name (see also case CAC 101251 SURCREDIT-AGRICOLE.COM, CAC 101250 PRADAXA.XYZ: "The adoption of a well-known trademark into a domain name by someone with no apparent connection with the name suggests opportunistic bad faith (see The Gap, Inc. v. Deng Youqian, WIPO Case No. D2009-0113; SembCorp Industries Limited v. Hu Huan Xin, WIPO Case No. D2001-1092; Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., WIPO Case No. D2000-0163).

According to the Complainant`s contention and in the absence of any contrary contention of the Respondent, the Panel holds the Respondent`s conduct to be the manifestation of use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ASCOMA.XYZ**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2016-09-23

Publish the Decision