Decision for dispute CAC-UDRP-101564

Case number	CAC-UDRP-101564
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Domain names	crosslend.org

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	CrossLend GmbH

Complainant representative

Organization	SKW Schwarz

Respondent

Organization	D.R D.R

OTHER LEGAL PROCEEDINGS

The Panel has not been made aware of any other legal proceedings which are pending or decided and which relate to the Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant is the registrant of the following trademarks:

- EU Trademark No. 013475629 "crosslend" (word), registered on April 1, 2015 (priority date: 19 November 2014), for goods and services in classes 09, 35, 36, 38;

- EU Trademark No. 013475694 "crosslend" (figurative), registered on April 20, 2015 (priority date : November 19, 2014), for goods and services in classes 09, 35, 36, 38;

- German trademark No 302014072303 "CrossLend" (word), registered on February 23, 2015 (priority date: October 14, 2014), for goods and services in classes 09, 35, 36, 38, ; and

- German trademark No 302014062651 "crosslend" (combined), registered on February 23, 2015 (priority date: December 12, 2014), for goods and services in classes 09, 35, 36, 38.

The Complainant uses these trademarks to offer, inter alia, financial and monetary services, including lending and loans services and banking, and financial analysis.

FACTUAL BACKGROUND

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

The Complainant is a German company founded in 2014 that operates in the financial technology sector. The company is active in Germany, the United Kingdom, the Netherlands, and Spain. Its official website is available at <www.crosslend.com>.

The Respondent appears to be an entity based in the United Kingdom. No further details about the Respondent are known.

The Domain Name was registered on February 22, 2017 using a privacy protection service. It was resolving to a parking page containing sponsored links in relation to financial and loan services. The Domain Name is also being offered for sale on Sedo's platform for 1,850 EUR.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant asserts that it is a German company in the financial technology sector founded in 2014 which operates a multinational platform where private clients can invest and obtain credit across borders. The Complainant asserts that it gives its clients straightforward access to the new asset class of consumer loans. All potential borrowers are risk-assessed using an innovative proprietary scoring technology. Each loan is then assigned a risk class from A (lowest risk) to HR (highest risk), reflecting the differing risk of default across the scale. Low risk loans, in principle, offer correspondingly low interest, while high risk loans offer higher interest. The Complainant asserts that it is active in Germany, the United Kingdom, the Netherlands, and Spain.

The Complainant asserts that the Domain Name is confusingly similar to the Complainant's trademarks, as the second-level domain name identically reproduces the “crosslend” trademark and the presence of the top level domain “.org” is negligible.

The Complainant further asserts that the Respondent does not have any rights or legitimate interests in the Domain Name. The Complainant states that it has not authorised the Respondent to register the Domain Name and that nothing indicates that the Respondent could have a right to the Domain Name. It states that there is no apparent hint of any kind that the Respondent is operating in any other way under the name of "Crosslend". The Complainant further contends that the rights of the Complainant predate the registration date of the Domain Name. It also argues that the Respondent cannot acquire any rights or legitimate interests by parking the Domain Name. The Complainant asserts that the automatically generated links found on the website associated with the Domain Name are not related to any activity of the Respondent, but only a random list of links generated by third parties. The Complainant also asserts that there is no evidence that the Respondent plans to use the Domain Name for a bona fide offering of goods or services or a legitimate, non-commercial or fair use.

Finally, the Complainant asserts that the Domain Name was registered and is used in bad faith. The Complainant argues that the Respondent has acquired the Domain Name for the purpose of selling it or otherwise transferring it to the Complainant, or to a competitor. Furthermore, the Complainant states that the rights of the Complainant predate the registration date of the Domain Name. Also, the Complainant underlines that the Domain Name is being offered for sale. The Complainant argues that such behaviour constitutes evidence of bad faith pursuant to paragraph 4(b)(i) of the Policy. Furthermore, it argues that the Respondent is using a privacy protection tool to obfuscate its identity and that that is a clear indication that the Respondent is aware of the fact that he might be trying to avoid a finding that it is infringing the Complainant’s intellectual property rights and raises a rebuttable presumption of bad faith registration and use (NAF claim no. FA 1505001620489, Lockheed Martin Corporation vs. toyosei maruyama).

RESPONDENT:

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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the Domain Name, the Complainant must prove the following three elements:

(i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules provides that the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Furthermore, paragraphs 10(b) and 10(d) of the Rules provide that the Panel shall ensure that the parties are treated with equality and shall determine the admissibility, relevance, materiality, and weight of the evidence.

In addition, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, the Rules, the Panel shall draw such inferences therefrom as it considers appropriate.

The Panel notes that the Respondent did not reply to the Complaint. The Respondent's failure to respond, however, does not automatically result in a decision in favour of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules. See paragraph 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0").

Taking the aforementioned provisions into consideration, the Panel finds as follows:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Panel to consider first whether the Complainant has established relevant trademark rights. The Complainant has provided evidence that it has registered trademark rights in CROSSLEND in

connection with financial services. The Panel is therefore satisfied that the Complainant has established relevant trademark rights.

The Panel is also required under paragraph 4(a)(i) of the Policy to examine whether the Domain Name is identical or confusingly similar to the Complainant's trademark. The Domain Name incorporates the Complainant's CROSSLEND trademark without adornment under the ".org" generic Top-Level Domain ("gTLD"). Prior panels deciding under the Policy have held that "when a domain name wholly incorporates a complainant's registered mark that is sufficient to establish identity or confusing similarity for purposes of the Policy". See Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr., WIPO Case No. D2000-1525.

The gTLD ".org" is generally disregarded under the identity or confusing similarity test as it is a functional element.

The Panel therefore finds that the Domain Name is identical to the Complainant's trademark. The Complainant has therefore satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following list of non-exhaustive circumstances that may suggest that a respondent has rights or legitimate interests in a domain name, including:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."

The Complainant is required to make a prima facie case that the Respondent does not have rights or legitimate interests in the Domain Name. Once such prima facie case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Domain Name in question. If, however, the Respondent fails to come forward with such relevant evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See paragraph 2.1 of the WIPO Jurisprudential Overview 3.0.

The Panel has considered the evidence put forward by the Complainant and considers that the Complainant has made a prima facie showing of the Respondent's lack of rights or legitimate interests in the Domain Name and that, as a result of its default, the Respondent has failed to rebut such a showing.

The Complainant has asserted that the Respondent has not been authorised by the Complainant to make any use of its CROSSLEND trademarks. There is no evidence either that the Respondent is commonly known by the Domain Name, in accordance with paragraph 4(c)(ii) of the Policy.

The Panel further finds that the Respondent's use of the Domain Name for a parking website containing sponsored links related to the Complainant's same business activity (ie. banking and financial activities) cannot be considered either a bona fide offering of goods or services or a legitimate non-commercial or fair use of the Domain Name, in accordance with paragraphs 4(c)(i) and 4(c)(ii) of the Policy, respectively, as the Respondent is unduly profiting from the Complainant's rights and is misleading internet users as to its source. See, for instance, Ustream.TV, Inc. v. Vertical Axis, Inc, WIPO Case No. D2008-0598. See also paragraph 2.9 of the WIPO Jurisprudential Overview 3.0 ("Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.").

The Panel further finds that, in the absence of any rights or legitimate interests in the Domain Name, the Respondent's offering the Domain Name for sale on an auction platform cannot by itself give rise to rights or legitimate interests in the Domain Name. See Educational Testing Service v. TOEFL, WIPO Case No. D2000-0044 ("the mere offering of the domain name for sale to any party does not constitute a right or legitimate interest in that name").

Furthermore, the Respondent's lack of rights or legitimate interests in the Domain Name may be further inferred from the Respondent's failure to submit a response to the Complaint. See Pomellato S.p.A v. Richard Tonetti, WIPO Case No. D2000-0493 ("non-response is indicative of a lack of interests inconsistent with an attitude of ownership and a belief in the lawfulness of one's own rights") and GA Modefine S.A. and Giorgio Armani S.p.A. v. Yoon-Min Yang, WIPO Case No. D2005-0090.

The Panel therefore finds that the Respondent has no rights or legitimate interests in the Domain Name. The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The term "Crosslend" is neither generic nor descriptive. Rather, the Complainant's CROSSLEND trade mark enjoys a considerable degree of distinctiveness in connection with financial services. Furthermore, the evidence put forward by the Complainant shows that the Complainant's trademark predates the registration date of the Domain Name by at least 3 years and has been used extensively in connection with financial services, including in the United Kingdom, where the Respondent appears to be based. The Panel therefore finds that the Respondent was likely aware of the Complainant's rights at the time of registration of the Domain Name, and thus registered it in bad faith seeking to take advantage of the Complainant's rights, as shown by the Respondent's subsequent use of the Domain Name.

The Panel further finds that the Respondent's use of the Domain Name for a parking page containing sponsored links, including links related to the Complainant's same business activity, and from which the Respondent or a third party is undoubtedly obtaining financial gain is further evidence of bad faith, given that the Respondent or a third party is unduly profiting from the Complainant's goodwill and renown. See Ustream.TV, Inc. v. Vertical Axis, Inc, supra. Whether the links are automatically generated or not is irrelevant as a domain name registrant is generally responsible for the content appearing on the associated website (see paragraph 3.5 of the WIPO Jurisprudential Overview 3.0). The Panel therefore finds that by using the Domain Name for a parking page containing sponsored links related to the Complainant's activities, the Respondent is intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, within the meaning of paragraph 4(b)(iv) of the Policy.

The Respondent's offer to sell the Domain Name on an auction platform is, within the circumstances of this case, strong evidence that the Respondent registered and used the Domain Name in bad faith, in accordance with paragraph 4(b)(i) of the Policy. See Educational Testing Service v. TOEFL, supra ("The value which Respondent seeks to secure from sale of the domain name is based on the underlying value of Complainant's trademark… In light of the undisputed record in this proceeding, the Panel concludes that the Respondent did in fact register and use the "toefl.com" domain name in bad faith").

The Panel draws an adverse inference from the Respondent's use of a privacy protection service to conceal its identity. Whilst privacy shields may be legitimate in certain cases "it is difficult to see why a PPC advertiser needs to protect its identity except to frustrate the purposes of the Policy or make it difficult for a brand owner to protect its trade marks against infringement, dilution and cybersquatting". See Ustream.TV, Inc. v. Vertical Axis, Inc., supra.

Finally, the Panel also draws an adverse inference from the Respondent's failure to take part in the present proceedings.

The Panel therefore finds that the Respondent registered and is using the Domain Name in bad faith. The Complainant has therefore satisfied 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. **CROSSLEND.ORG**: Transferred

PANELLISTS

Name	**David Taylor**

DATE OF PANEL DECISION 2017-07-31

Publish the Decision