Decision for dispute CAC-UDRP-101671

Case number	CAC-UDRP-101671
Time of filing	2017-09-29 11:12:24
Domain names	abraaj-uk.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	The Abraaj Group

Respondent

Organization	hilscher of lo

OTHER LEGAL PROCEEDINGS

The Complainant has informed the Panel, as follows: "(t)he fraudulent impersonation of our UK legal entity and personnel is being reported to the UK City Of London Police (National Fraud & Cyber Crime)". As this fact does neither have to do directly with the current domain name dispute, nor does it concern a procedure before a Court of Law as such at this stage, the Panel finds that, according to Rule 18 of the Rules for Uniform Domain Name Dispute Resolution Policy, the present case may normally continue.

IDENTIFICATION OF RIGHTS

In these proceedings, the Complainant relies on the following trademarks:

- THE ABRAAJ GROUP (word), US Registration No. 86880381, filed on January 20, 2016, and granted on April 4, 2017, in the name of Abraaj Investment Management Limited (which apparently belongs to the same group of companies as the Complainant, as per the latter's allegations, which have not been refuted by the Respondent);

- ABRAAJ (word), US Registration No. 86187893, filed on February 7, 2014 and abandoned June 19, 2017 (but existing at the time of the Disputed domain name registration), in the name of Abraaj Investment Management Limited (which apparently belongs to the same group of companies as the Complainant, as per the latter's allegations, which have not been refuted by the Respondent);

- ABRAAJ ADVISERS UK – this alleged UK trademark registration has not been traced by the Panel;

- ABRAAJ CAPITAL (word), UK Registration No. UK00002511865, registered as of March 24, 2009, in the name of Abraaj Capital Limited (which apparently belongs to the same group of companies as the Complainant, as per the latter's allegations, which have not been refuted by the Respondent).

It is worth noting that, the Complainant (and its group of companies) owns many other trademarks in various countries, which have not been cited in these proceedings.

FACTUAL BACKGROUND

As stated on its own website <abraaj.com>, the Complainant is “a global institution investing in growth markets across Africa, Asia, Latin America, the Middle East and Turkey”. Founded in 2002, the Complainant is apparently active in the private equity industry in many of the markets where it operates, through an innovation and entrepreneurial drive.

The Complainant owns a significant portfolio of trademarks including mainly the wording "ABRAAJ", among which some national trademarks dating back to 2004. It also owns (most probably through a privacy company) related domain names, like <abraaj.com> since January 8, 2003.

The Disputed domain name <ABRAAJ-UK.COM> was registered on August 24, 2017, by the Respondent, as proven by a simple ICANN WhoIs search. It is not used in connection with an active website. However, the Disputed domain name has been used by the Respondent to send phishing e-mails to the Complainant’s travel agents working for the Complainant’s regional offices, presenting itself as an employee of the Complainant, in order to make them book flights on credit for the Respondent and to obtain personal and financial information.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

The Complainant indirectly contends that the Disputed domain name is confusingly similar to its ABRAAJ trademark, as it fully incorporates this trademark. This last element is sufficient to support the finding that the Disputed domain name is confusingly similar to the Complainant's trademark. Indeed, the mere addition of the component “UK” (which is an abbreviation for the United Kingdom), after the Complainant’s trademark, does not change the overall impression of a most likely connection with the trademark ABRAAJ of the Complainant.

The Complainant indirectly maintains that the Respondent lacks rights or legitimate interests in the Disputed domain name, because the Complainant is not affiliated with the Respondent nor has it ever authorised the Respondent to register its trademark as a domain name, the Complainant has never licensed its trademark to the Respondent, and because the Disputed domain name does not resolve to an active website since its registration.

According to the Complainant, given the distinctiveness and reputation of the ABRAAJ trademark, the Respondent registered the Disputed domain name with full knowledge of the Complainant's trademark in an intentionally designed way with the aim to create a likelihood of confusion with the Complainant’s trademarks and domain names, and this is evidence of the fact that the Disputed domain name was registered in bad faith.

With respect to use in bad faith, the Complainant points out that the Respondent has not actively used the domain name, which is considered as a clear indication of bad faith. Further, the Respondent has fraudulently used the domain name, in order to make its regional collaborators to book flights on credit for the Respondent and to obtain personal and financial information.

For all these reasons, the Complainant concludes that the Respondent registered and used the Disputed domain name in bad faith.

The Respondent did not reply to the Complainant’s contentions. However, the consensus view of UDRP panels is that the Respondent’s default does not automatically result in a decision in favor of the Complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from a respondent’s default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in these proceedings. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the Panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are not such exceptional

circumstances.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed 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).

The Disputed domain name consists of the Complainant's trademark, followed by a geographical term. The Panel finds that the Disputed domain name is confusingly similar to the ABRAAJ trademark, as the disputed domain name contains the trademark in its entirety with the addition of "-uk", which is a reference to the United Kingdom of Great Britain and Northern Ireland, where the Complainant is also active, and which is insignificant to the overall impression.

As far as the gTLD ".com" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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 Disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

Since proving a negative fact is almost impossible, Panelists in UDRP proceedings have generally agreed that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed domain name to shift the burden of proof to the Respondent.

In the case at issue, the Complainant indirectly argued that it had never authorised the Respondent to register the ABRAAJ trademark in a domain name, and that it had never licensed its trademark to the Respondent.

Furthermore, the Disputed domain name does not resolve to an active website and therefore the Respondent cannot demonstrate any use of the Disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the Disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the Disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the Disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the Respondent has chosen not to file a Response.

Therefore the Panel is satisfied that also the second requirement under the Policy is met.

BAD FAITH

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

The Complainant showed that the Disputed domain name was used for phishing purposes by the Respondent, by sending e-mails to the Complainant’s travel agents working for the Complainant’s regional offices, presenting itself as an employee of the Complainant, in order to make them book flights on credit for the Respondent and in an attempt to obtain personal and financial information from the Complainant's employees, through impersonation of a Complainant's existing employee in the United Kingdom. In the absence of a Response, this is a clear evidence of use of the Disputed domain name in bad faith. The Panel further infers from this use which immediately followed the registration of the Disputed domain name, that the Respondent had the ABRAAJ trademark in mind when he had registered the Disputed domain name, which was therefore

registered in bad faith.

Therefore the Panel finds it clear that the Disputed domain name was registered and used in bad faith.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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 Disputed domain name wholly incorporates the Complainant's trademark, followed by a geographical term. The Disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the Disputed domain name, and the Complainant never licensed its trademarks to the Respondent. The Respondent is not using the Disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the Disputed domain name with knowledge of the Complainant's well-known trademark. His fraudulent use of the Disputed domain name, which included sending phishing e-mails by impersonating an existing employee of the Complainant, is in bad faith, as there is no conceivable use of the Disputed domain name that could amount to a legitimate use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ABRAAJ-UK.COM**: Transferred

PANELLISTS

Name	**Sozos-Christos Theodoulou**

DATE OF PANEL DECISION 2017-11-08

Publish the Decision