Decision for dispute CAC-UDRP-101705

Case number	CAC-UDRP-101705
Time of filing	2017-10-06 12:57:36
Domain names	triskalia.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	TRISKALIA

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	ROGER PRIDEAUX

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other existing legal proceedings, pending or decided, relating to the disputed domain name

IDENTIFICATION OF RIGHTS

The Complainant is the owner of TRISKALIA (word), international trademark registration No. 1070786 registered on 3 December 2010 and designating Benelux, Germany, Spain, Italy, Great Britain and Portugal, for goods and services in classes 1, 5, 29, 31, 35, 40 and 44.

FACTUAL BACKGROUND

The Complainant is a farm purchasing cooperative created in 1911 and currently operating in three main business areas: agricultural, production, food processing and distribution. The Complainant aggregates more than 16,000 member farmers employing 4,800 individuals with 280 sites located in Brittany (France). In 2016 the Complainant generated a turnover of 1,9 billion Euro.

The Complainant on-line presence is secured through the domain name <triskalia.fr>, registered on 12 April 2010, which is used to promote its activity. The Complainant also owns other domain names, such as <triskalia-group.com> and <triskalia.net>.

The domain name <triskalia.com> was registered on 25 November 2011 and is used in connection with a website displaying

sponsored links. Furthermore, the disputed domain name is offered for sale on the Sedo platform.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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).

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).

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).

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. The disputed domain name is identical to the Complainant’s rights (Para. 4(a)(i)of the Policy).

The Complainant is the owner of the registered word mark TRISKALIA, which is identical to the disputed domain name <triskalia.com>. The addition of the gTLD ".com" does not affect the identity between the two signs, since the gTLD is a technical requirement that lacks distinctive character.

Therefore, the Panelist is satisfied that the first condition under the Policy is met.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name (Para. 4(a)(ii)of the Policy).

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lack of rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative". As such, where a complainant makes our a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see also §2.1. of WIPO Overview 3.0).

In the instant case, the Complainant has indicated that the Respondent is not affiliated with, nor authorized by, the Complainant. Moreover, the Respondent has no business relationship with the Complainant. The Respondent had the opportunity to rebut the Complainant's statements, but failed to submit a Response. Accordingly, the Panel has no reasons to believe that the Complainant's assertions are incorrect.

Furthermore, the disputed domain name is used to give access to a website containing pay-per-click links referring to the Complainant's activity and is offered for sale on the Sedo platform for an amount far in excess of the out-of-pocket costs directly related to the domain name.

Both these uses of the disputed domain name do not amount to a bona fide offering of goods and services, or to a fair use of the domain name. On the contrary, it appears that the Respondent has sought to gain financially from the confusing

similarity of the disputed domain name with the TRISKALIA trademark (see among others, Dollar Bank, Federal Savings Bank v. Above.com Domain Privacy / Transure Enterprise Ltd., WIPO Case No. D2016-0700; ACCOR v. Steve Kerry / North West Enterprise, Inc., WIPO Case No. D2006-0649; mVisible Technologies Inc, v. Navigation Catalyst Systems, Inc, WIPO Case No. D2007-1141).

In view of the foregoing, the Panelist is satisfied that also the second condition under the Policy is met.

III. The disputed domain name has been registered and is being used in bad faith (Para. 4(a)(iii)of the Policy).

Bad faith is generally understood to occur where a respondent takes unfair advantage of, or otherwise abuses a complainant's mark.

In the case at issue, the Panel notes that the Complainant's trademark consists of a fanciful term. It is therefore not credible that the Respondent registered <triskalia.com> accidentally. It is on the contrary likely that the Respondent registered the disputed domain name to take unfair advantage from the Complainant's trademark. The current use of the <triskalia.com> domain name supports this assumption. The domain name resolves to a parking page containing pay-per-click links. The Respondent is probably deriving an economic advantage from these links. Moreover, the disputed domain name is offered for sale on the Sedo platform for an amount of 10,000 Euro, which is certainly far in excess of the out-of-pocket costs directly related to the domain name, that the Policy considers justifiable not to incur in bad faith.

For all these reasons, the Panel concludes that the disputed domain name <triskalia.com> has been registered and is being used in bad faith. Therefore, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TRISKALIA.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2017-11-23

Publish the Decision