# Decision for dispute CAC-UDRP-101767

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| Case number | CAC-UDRP-101767 |
| Time of filing | 2017-11-10 12:27:49 |
| Domain names | petrossiancakes.com |

## Case administrator

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| Name | Aneta Jelenová (Case admin) |

## Complainant

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| Organization | CAVIAR PETROSSIAN S.A. |

## Complainant representative

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| Organization | Nameshield (Laurent Becker) |

## Respondent

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| Name | Anasheh Petrossian Petrossian Cakes |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of international word trademark reg. no. 425498 “PETROSSIAN”, with registration date of 22 October 1976, registered in classes 18, 22, 29, 30, 31, 32, 33 and 42 and international figurative trademark reg. no. 562901 “PETROSSIAN”, with registration date of 21 November 1990, in classes 8, 14 and 21. (“Complainant’s Trademarks”).

The Disputed domain name <petrossiancakes.com> was registered on 28 October 2017.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) CAVIAR PETROSSIAN S.A., an institution existing for nearly 100 years (website at: www.petrossian.com), is the French luxury brand synonymous with caviar. The Complainant is specialized in the production of caviar but the Complainant has also diversified his range by offering his customers other products such as bakery;

(b) The Complainant is the owner of several PETROSSIAN trademarks registered and used all over the world; and

(c) The Complainant owns many Internet domain names including the denomiation PETROSSIAN.

The Respondent did not file a response to the Complaint. However, failure of the Respondent to file a Response to the Complaint does not mean automatic acceptance of the Complaint by the Panel. It is still necessary that the Panel carefully considers all facts and circumstances of the case.

The Panel noted that “petrossian” is a denomination corresponding to the family name likely of Armenian origin (please see the Dictionary of American Family Names. Oxford University Press, 2006 at: www.oxfordreference.com). The Panel also noted that the Respondent registered the Disputed domain name under the name of “Anasheh Petrossian Petrossian Cakes”, provided existing address in Glendale, California, USA, e-mail address and telephone contact.

In the opinion of the Panel, such registration details include reference not only to Respondent’s name (Anasheh Petrossian) but also to the name of her business (Petrossian Cakes). Under these circumstances the Panel considered necessary to conduct further investigation into the identity of the Respondent and her business as such facts are important for examination of the Respondent’s legitimate interest to the Disputed domain name and bad faith in its registration and use.

Through Google search, the Panel identified that there indeed exists a business located in Glendale, California, called “Petrossian Cake Designs”, providing what its name suggests, i.e. design and preparation of personalized cakes for special occasions such as birthdays or weddings. Although its Facebook page shows that the owner of such business is not particularly diligent in updating information, from the timeline entries it appears to the Panel that this is indeed a legitimate business operation and Anasheh Petrossian is a person somehow (presumably as an owner or employee) connected to such business. Legitimacy of the business is also supported by references found in other online sources. For example, reference to Petrossian Cake Designs can be found at the website People.com. The business is also included in the vendor directory located at ArmenianBridal.com and the phone number listed there corresponds to the one listed in the Disputed domain name registration. And finally, the prefix of the email address under which the Disputed domain name was registered, i.e. “anash999” corresponds to the registration at the art server deviantart.com, where a person under the name Anasheh Petrossian has been registered since 2010 and several of her artworks are displayed there (please see anash999.deviantart.com).

In the light of the above facts the Panel formed a preliminary view that this is not a typical cybersquatting case and gave both parties the opportunity to file additional statements on the above factual findings of the Panel which suggest that the Respondent has a legitimate interest to the Disputed domain name.

The Complainant filed such additional statement in which it argued that the identity of the Respondent has not been established and that it appears to the Complainant that the Disputed domain name may have been registered under a false identity. The Respondent did not file any additional statement.

PARTIES CONTENTIONS

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) The Disputed domain name is confusingly similar to Complainant`s Trademarks;

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed domain name and is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent;

(iii) Neither licence nor authorization has been granted by the Complainant to the Respondent to use Complainant`s Trademarks, or apply for registration of the Disputed domain name by the Complainant;

(iv) The website in relation with the Disputed domain name is inactive;

(v) The trademark PETROSSIAN® is associated to the word “CAKES” referring to the products offered by the Complainant for its customers. Therefore, the association of the terms “PETROSSIAN” and “CAKES” shows necessarily that the Respondent had knowledge of the Complainant's trademarks when he registered the disputed domain name; and

(vi) The Disputed domain name is still inactive since its registration. Therefore, the Respondent has registered the Disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, having no rights or legitimate interests in doing so within the meaning of paragraph 4(b)(ii) of the Uniform Dispute Resolution Policy ("UDRP" or "Policy").

On this basis the Complainant asserts that the Disputed domain name is confusingly similar to the Complainant`s Trademarks, the Respondent has no legitimate interest in using the Disputed domain name and that it registered and has been using the Disputed domain name in bad faith.

Therefore, the Complainant seeks transfer of the Disputed domain name to the Complainant.

THE RESPONDENT:

The Respondent did not provide any response to the complaint, nor did the Respondent provide any additional statement, although it was requested by the Panel.

RIGHTS

The Panel concluded that the Disputed domain name is confusingly similar to Complainant’s Trademarks within the meaning of paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has not shown that the Respondent has 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 not shown that 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

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements to obtain an order that the Disputed domain name should be transferred or cancelled:

(i) the Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Disputed domain name; and

(iii) the Disputed domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in these proceedings.

RIGHTS

The Disputed domain name consists of the element “Petrossian” which is identical to the Complainant’s Trademarks and the element “cakes” which is descriptive of the products that are likely to be advertised under the Disputed domain name. Adding of such descriptive element to a trademark cannot change the conclusion that the Disputed domain name is confusingly similar to Complainant’s Trademarks. Here the Panel fully adheres to the consensus view of WIPO Panels on this issue (please see Section 1.8 of WIPO Jurisprudential Overview 3.0 at www.wipo.int).

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration. Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the UDRP.

RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed domain name. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the Disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (please see for example WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

In the Panel’s opinion, such a prima facie case has not been made out by the Complainant.

The Complainant only established that no webpage exists under the Disputed domain name. However, such fact alone is not sufficient to establish lack of the legitimate interest of the Respondent in the Disputed domain name in a situation where the Disputed domain name includes an element corresponding to the family name of the Respondent (Petrossian) and a descriptive element (cakes) which refers to the business the Respondent is involved in (design and preparation of special occasion cakes). Here, the Panel agrees with the long established view that a use of a personal name in a domain name generally establishes legitimate interest in such a domain name under paragraph 4(c)(ii) of the UDRP (please see for example WIPO case no. D2014-2111, Alessandro International GmbH v. Alessandro Gualandi, <alessandro.com>, and numerous other cases referred to in such decision). Therefore, the Respondent has legitimate interest to the element of the Disputed domain name identical to Complainant’s Trademark.

Then, in its additional statement, the Complainant alleged that the Disputed domain name may be registered under a false identity. The Panel disagrees with such allegation. As the Panel confirmed by its own examination, various online sources confirm identity of Anasheh Petrossian, legitimacy of the Petrossian Cake Designs business and involvement of Anasheh Petrossian in such business. Reliability of such online sources certainly cannot compare to officially authorized information. However, considering all such information individually as well as in its totality, it is in the opinion of the Panel very improbable, that the Disputed domain name was registered under a false identity.

The Panel emphasizes that this case is not comparable to WIPO case no. D2017-2051 JCDECAUX SA v. whois privacy / DEPARTEMENT juridique, JCDECAUX SA DEPARTEMENT juridique <jcdecaux.taipei> and WIPO case no. D2017-0261, Boehringer Ingelheim International GMBH v. (Boehringer Ingelheim) < boehringer-ingelheim-in.com> referred to by the Complainant as in those cases there was no evidence that the identities used for registration are existing personal names / legitimate business names and considering the nature of these domain names such fact was also very improbable. On the other hand, in this case the Disputed domain name corresponds to the commonly used personal name and there are various online sources confirming the identity of the person who registered the Disputed domain name as well as existence of its business to which the Disputed domain name refers.

Therefore, the Panel concludes that the Complainant failed to establish that the Respondent does not have any right or legitimate interest to the Disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). Such conclusion alone is sufficient to deny the Complaint. However, for the sake of completeness the Panel also briefly concludes on the

issue of bad faith of the Respondent.

BAD FAITH

The Panel does not find bad faith of the Respondent in registration and use of the Disputed domain name.

The Disputed domain name corresponds to the family name of the Respondent and the business in which the Respondent is involved. There is no evidence that Disputed domain name was registered for the purpose of its future sale to the Complainant, infringement of Complainant's Trademarks or creation of false association with the Complainant. With respect to the Disputed domain name corresponding to the family name of the Respondent, it is not sufficient for the Complainant to rely on the general arguments that the Complainant must have been aware of the Complainant's Trademarks or that Complainant registered the Disputed domain name in order to prevent Complainant from using the Disputed domain name which could otherwise be applicable in typical cybersquatting cases. Specific bad faith conduct of the Respondent (such as creating false association with the Complainant and / or its trademarks) would have to be established, which in this case was not.

As a result, the Panel found that the Disputed domain name has not been registered and used by the Respondent in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **PETROSSIANCAKES.COM**: Remaining with the Respondent

## PANELLISTS

| Name | **Michal Matějka** |
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DATE OF PANEL DECISION 2017-12-26

Publish the Decision