Decision for dispute CAC-UDRP-101607

Case number	CAC-UDRP-101607
Time of filing	2018-01-25 09:03:23
Domain names	xn--cestujlevn-9nb.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Cestujlevne.com s.r.o.

Complainant representative

Name	Mgr. Václav Kacálek

Respondent

Name	Tomas Rundt

OTHER LEGAL PROCEEDINGS

The Disputed domain name has already been subject to UDRP proceedings between the same parties where the Complainant requested transfer of the Disputed domain name. The dispute was heard by the Czech Arbitration Court under the Case No. 101392. The Complaint was rejected.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the Czech figurative trademark reg. no. 350227 cestujlevne.com plus device, registered on December 16, 2015 and applied for on May 15, 2015 for goods and services in classes 35, 39, and 43.

FACTUAL BACKGROUND

The Panel rejected the Complaint for procedural reasons. Please see below.

PARTIES CONTENTIONS

In the Complaint the Complainant asserted that:

(a) The Complainant is Cestujlevne.com s.r.o., a company registered in the Czech Republic, which owns, operates and provides the website registered as “cestujlevne.com“. The website “cestujlevne.com” is one of the major Czech online websites for people who search interesting tips for cheap air tickets, trips or accommodations around the world, including offer of their reservation.

(b) Since 2015 the Complainant is also an owner of the combined registered trademark “cestujlevne.com”, entered in the Czech trademark register maintained by the Industrial Property Office of the Czech Republic under file no 350227, among other things, classes of products and services: (35) business mediation services advertising and business information; (39) travel booking; (43) hotel reservations.

(c) In June 2013 the Respondent registered the internet domain <xn--cestujlevn-9nb.com>, through which a cestujlevně.com website has been operated (if you type the Disputed domain name to the browser, you visit the website "cestujlevně.com"). The website “cestujlevně.com” is provided exclusively in Czech language and it is targeted on Czech consumers.

(d) The Disputed domain name is confusingly similar to the above trademark of the Complainant.

(e) Respondent lacks any right or legitimate interest in the Disputed domain name.

(f) The Complainant realizes that it registered its trademark cestujlevne.com after the registration of Disputed domain name <cestujlevně.com> (the Disputed domain name was registered on July 26, 2013 and the Complainant's trademark was filed and registered in 2015). However, the Complainant is confident that the Disputed domain name has been registered and is being used in bad faith as the Disputed domain name was created and is being used intentionally to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's trademark and domain name <cestujlevne.com>.

For these reasons the Complainant seeks transfer of the Disputed domain name to the Complainant.

In the Response, the Respondent referred to the previous CAC Case No. 101392 where Complainant's claim for transfer of the Disputed domain name was rejected by the Panel.

RIGHTS

The Panel rejected the Complaint for procedural reasons. Please see below.

NO RIGHTS OR LEGITIMATE INTERESTS

The Panel rejected the Complaint for procedural reasons. Please see below.

BAD FAITH

The Panel rejected the Complaint for procedural reasons. Please see below.

PROCEDURAL FACTORS

The Panel concludes that the Complaint cannot be heard on merits because it is a re-filed case and no circumstances justifying a re-hearing of the case were asserted by the Complainant.

PRINCIPAL REASONS FOR THE DECISION

As there have already been UDRP proceedings between the same parties in relation to the Disputed domain name, the Panel first considered whether it can hear the case on merits.

The Panel concludes that it cannot.

There is a legal principle applicable in majority (if not all) jurisdictions in the world that once a case is finally decided, it cannot be heard again, save for rare and exceptional circumstances (such as new facts or evidence which the parties could not assert in the original case).

This principle also applies to UDRP proceedings. According to WIPO Panel Views on Selected UDRP Questions, Third Edition, Section 4.18, the following consensus view has been established on re-filed cases:

"Panels have accepted refiled complaints only in highly limited circumstances such as (i) when the complainant establishes that legally relevant developments have occurred since the original UDRP decision, (ii) a breach of natural justice or of due process has objectively occurred, (iii) where serious misconduct in the original case (such as perjured evidence) that influenced the outcome is subsequently identified, (iv) where new material evidence that was reasonably unavailable to the complainant during the original case is presented, or (v) where the case has previously been decided (including termination orders) expressly on a “without prejudice” basis."

In the refiling itself, a complainant must clearly indicate the grounds it believes would justify acceptance of the refiled complaint."

From the above it clearly ensues, that the Panel in UDRP proceedings can only hear a re-filed case under exceptional circumstances and such circumstances must clearly be identified and explained by the Complainant in its Complaint. The Panel in the present case fully adheres to the above established and reasonable principles.

In this case, the Complainant has not even mentioned the previous case in its Complaint and failed to identify any circumstance that would justify re-hearing of the case. The facts and arguments relied on by the Claimant are in principle the same as in CAC Case No. 101392.

Therefore, the Panel has no other choice than to reject the Complaint without reviewing the case on merits.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **XN--CESTUJLEVN-9NB.COM**: Remaining with the Respondent

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2018-03-04

Publish the Decision