Decision for dispute CAC-UDRP-101847

Case number	CAC-UDRP-101847
Time of filing	2018-01-24 09:45:22
Domain names	salapage.com

Case administrator

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

Complainant

Organization	RUEDUCOMMERCE

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Name	Huynh Ngoc Ket

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

ALAPAGE.COM, International (3320880), classes 9, 16, 28, 38, 41, 42, 45, filed on 22 October 2004
ALAPAGE, International (3320881), classes 9, 16, 28, 38, 41, 42, 45 filed on 22 October 2004
ALAPAGE.COM, CTM (1572718), classes 9, 16, 35, 36, 39, 41, 42 filed on 23 March 2000
ALAPAGE.COM, International (732996), classes 9, 16, 35, 36, 38, 39, 41, 42 filed on 23 March 2000

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

COMPLAINT
(Rules, para. 3(b))

I. Introduction

This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy), approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules

for Uniform Domain Name Dispute Resolution Policy (the Rules), approved by ICANN on October 24, 1999 and the CAC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the Supplemental Rules).

II. The Parties

The Complainant in this administrative proceeding is the RueDuCommerce Company.

According to information provided by the whois of the domain name <salapage.com>, the Respondent in this administrative proceeding is:

Huynh Ngoc Ket Ahapa
86055 Huynh Tan Phat
10000 Ho Chi Minh
VIETNAM

III. The Domain Name and Registrar

This dispute concerns the domain name <www.salapage.com>.

The registrar with whom the domain name is registered:

NHAN NHOA
32 Vo Van Dung
Dong Da
HANOI
VIETNAM

IV. Jurisdictional Basis for the Administrative Proceeding

This dispute is properly administrated within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute.

V. Language of the proceedings

Regarding the language of the proceedings, it seems inevitable that the procedure must be in English.

As the international language that can be understood by all, English is the only effective way to initiate proceedings and the only way for the complainant to assert its rights. The Court has to understand that without a procedure in English, there is no way for the Complainant to protect his Trademarks.

Moreover, the registrar was able to respond to the Court request in English, which is the proof that English is the international language spoken by all parties.

Also, although the agreement between the Registrar and the Respondent was concluded in Vietnamese, the disputed domain name of the site at issue has a global generic extension ".com" and not a national extension.

Therefore, and as proceedings cannot be handled in Vietnamese, the Complainant asked for a change of language into English.

VI. Factual and Legal Grounds

This Complaint is based on the following grounds:

1. Background

The Complainant has registered the following trademarks in France:

• “ALAPAGE.COM” registered on 22 October 2004 under number 3320880 goods and services class 9, 16, 28, 38, 41, 42, and 45.
• “ALAPAGE” registered on 22 October 2004 under number 3320881 goods and services class 9, 16, 28, 38, 41, 42, and 45.

The complainant has registered the following CTM:

• “ALAPAGE.COM” registered on 23 March 2000 under number 1572718 goods and services class 9, 16, 35, 36, 39, 41, and 42.

The Complainant has internationally registered the following trademark:

• “ALAPAGE.COM” registered on 23 March 2000 under number 732996 goods and services class 9, 16, 35, 36, 38, 39, 41, and 42.

The RueDuCommerce Company has been registered on 27 April 1999 under the number B 422 797 720R.C.S. BOBIGNY. Its head office is situated 44 Avenue du Capitaine Glarner, 93400 ST OUEN – FRANCE.

RueDuCommerce is the owner of a portfolio of Trademarks for the course of its internet-order selling business activities on websites accessible notably at the following address: www.alapage.com.

During more than eleven years RueDuCommerce, specifically through its domain name has gained an important notoriety among the French net surfers and consumers. It is now a major e-merchant in France whose honorability and reliability are well-known from the Internet users.

2. The disputed domain name is confusingly similar to trademark in which the Complainant have rights

This similarity is illustrated, in particular, on three levels:

1) Visually, the disputed domain name fully incorporates the “”Alapage” trademark, with only the addition of the letter “s”;

2) Conceptually, only one letterdistinguishes the name “salapage” from “Alapage”. The recovery is almost identical and the spirit of the text is unaffected by this substitution. Indeed, the disputed domain namecontains dominant and distinctive parts that form the trademark of “Alapage”;

3) Phonetically, the sound of the name “salapage” is quasi-equivalent to that of “Alapage”.

The copying of the disputed domain name almost identically with a simple substitution of letters is undeniably a way to attract customers and take advantage of the notoriety of RueDuCommerce, the owner of the portfolio of Trademarks Alapage.

There is no doubt that Internet users seeing the disputed domain name may believe that it is somehow related to or authorized by RueDuCommerce Company.

This choice demonstrates the bad faith of the Respondent. It is significant that this element increasing the likehood of confusion.

3. The disputed domain name has been registered by the Respondent without rights or legitimate interest in the name

First of all, the Complainant has not licensed or otherwise permitted the Respondent to use his brand or to apply for or use any domain name incorporating it.

Internet inquiries as well as trademark database searches have not revealed any use or registrations by the Respondent that could be considered relevant.

The disputed domain name has been registered on April 20, 2017.

The RueDuCommerce Company has tried to reach the owner of the disputed domain name.

On April 27, 2017 a recorded delivery mail has been addressed to the Registrar.

On April 27, 2017 the Complainant has addressed a recorded delivery mail and e-mail to HUYNH NGOC KET AHAPA – 86055, Huynh Tan Phat – 10000 Ho Chi Minh, VIETNAM,.

The Complainant tried once again to reach the Respondent by recorded delivery mail and e-mail on July 10, 2017.

Without any success.

Therefore, the Complainant is forced to go before the Court to enforce its rights.

Secondly, the disputed domain name is not used for any real activity. In fact, the website specified that the domain name <salapage.com> is a “sales landing page”.

Moreover, the Respondent has not demonstrated, as the Policy requires, that he made preparations to use the disputed domain name in connection with a bona fide offering goods or services.

For all the foregoing reasons, the disputed domain name has been registered by the Respondent, without rights and legitimate interest.

4. The disputed domain name is registered and being used in bad faith

First, nothing on the website suggests that the Respondent is making a legitimate commercial or non-commercial business activity with the disputed domain name because it has never been used and it is not currently being used.

Besides, the Respondent has registered the disputed domain name on April 20, 2017, posteriorly to the registration of the trademarks by the Complainant. The Respondent was therefore able, at the time of the registration, to know the Complainant’s trademark and the infringement to intellectual property rights he was committing by registering this domain name.

Then, the choice of a name and an address very close to the real ones demonstrates the bad faith of the Respondent.

UDRP rules provide several ways of establishing bad faith. One is where the domain name is inactive and is not being used. Indeed, the paragraph 4 (b) recognises that inaction in relation to a domain name registration can, in certain circumstances, constitute a domain name being used in bad faith.

Accordingly the circumstances exposed above, the disputed domain name has been registered by the Respondent in bad faith.

• The disputed domain name is being used in bad faith

Actually, the main purpose of the registration of the disputed domain name has been to prevent the Complainant, legitimate owner of “Alapage” trademark, from reflecting the brand in a corresponding domain name while it is not exploited as the paragraph 4 b (ii) of the Policy describe “you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct”.

Not only did the Respondent buy a domain name belonging to the Complainant’s trademarks portfolio, but he has engaged in typo squatting which creates a confusingly similar domain name to the Complainant’s registered trademark and domain names, and so since its registration on 20 April 2017.

According to WIPO Case No. D2010-1118:

“Typo squatting occurs when a respondent purposefully includes typographical errors in the mark portion of a disputed domain name to divert Internet users who make those typographical errors”.

In the present matter, as explained above, the Respondent only added the letter “s” to the Complainant’s trademark “alapage”, keeping the essence of it. This constitutes typosquatting under WIPO case law.

Another case needs to be quoted:

“The use of misspellings alone is sufficient to prove bad faith under paragraph 4(b)(iv) of Policy” (WIPO Case No. D2000-0937).

In our case, the misspelling’s goal was first precisely to attract the Complainant’s clients by making a likelihood of confusion with its mark.

The disputed domain name leads to an inactive website, which is perceived as an act of “passive holding” which prevents the Complainant from registering the domain name under his rightfully owned trademark. This passive holding prevents the trademarks owner from using the rights conferred by his marks.

In this regard, a leading case needs to be quoted as it provides the conditions for a passive holding to amount to the Respondent acting in bad faith. The WIPO administrative panel held that:

“The particular circumstances of this case which lead to this conclusion are:
• The Complainant’s trademark has a strong reputation and is widely known […],
• The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name […] (Case No. D2000-0003)”.

As the registrant of <salapage.com> has no legal right to use the Complainant’s trademark, there is clearly bad faith in maintaining the domain name to the benefit of the Respondent.

Moreover, the website shows clearly that the disputed domain name was registered primarily for the purpose of harming the company RueDuCommerce and preventing our company from registering the said domain name.

According to all circumstances of this situation, the Respondent has registered the disputed domain name and is acting in bad faith.

5. Conclusion

The Respondent has registered a domain name that is similar to the trademarks registered and used by the Complainant.

The disputed domain name fully incorporates the “alapage” trademark, with the sole addition of the letter “s” at the beginning of the domain name “alapage”.

The disputed domain name is infringing Complainant’s intellectual property rights, violating the UDRP rules registering and being used in bad faith. Additionally, the disputed domain name is registered to prevent third parties from reflecting their trademarks in corresponding domain names.

Despite good faith attempts, the Complainant has not managed to find anything that would suggest that the Respondent has rights or legitimate interest in holding the domain name.

Accordingly, the Complainant requested the disputed domain name to be transferred to the Complainant, the RueDuCommerce Company.

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).

Similarity between the Complainants trademark and the disputed domain name

In determining whether the disputed domain name is confusingly similar to the Complainants rights, it is this Panels view, that the absence of legitimate content on the disputed domain name should not influence the assessment in favour of the Respondent.

Visually the disputed domain name incorporates - in full - the Complainants trademarks and differs only by the addition of the initial letter "s". This creates a similar or quasi-identical visual appearance, resulting in the disputed domain name being confusingly similar to the Complainants trademarks.

Phonetically, both the disputed domain name and the Complainants rights are, regardless of whether they are pronounced in English or French, almost identical. This is mainly due to the lack of pronunciation of the initial letter "s" in the disputed domain name. Consequently, both the disputed domain and the Complainants rights have their pronunciation emphasis on “alapage“.

Conceptually, the disputed domain and the Complainants rights might have slightly different meanings in French and no actual meaning in English.

However, it is this Panels conclusion, that despite minor differences, both the disputed domain and the Complainants rights essentially mean "on the page" in French and are, consequently, conceptually confusingly similar.

The Complainant has, therefore, to the satisfaction of the Panel, shown that the disputed domain name is confusingly similar to the Complainants trademarks, 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).

The Respondent registered the disputed domain name on 20 April 2017 and, as proven by the Complainant, attempts were made to contact the Respondent as early as 27 April 2017.

Although the Complainant indicated that the disputed domain name previously was described as a "sales landing page", which might indicate both the use and/or explain the conceptual thinking behind registering SAles LAnding Page, the disputed domain now only contains a text reading:

"This IP is being shared among many domains.

To view the domain you are looking for, simply enter the domain name in the location bar of your web browser."

The Complainant, however, has the burden of proof for a lack of legitimate interest in the disputed domain name, but due to the nature, facts and lack of response by the Respondent, the prima facie case build by the Complainant is sufficient for this Panel to conclude, that the Respondent has no legitimate interest in the disputed domain name.

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).

Registration and use in bad faith

The Complainant argued that the registration was made in bad faith and is being upheld with the sole purpose of preventing the Complainant from "reflecting the brand in a corresponding domain name".

While this Panel agrees that registering a confusingly similar domain name without any rights and legitimate interest hereto does constitute a registration in bad faith, the Complainant has not, to the satisfaction of this Panel proven, that the registration is being upheld to prevent the Complainant from registering this particular domain name.

However, both registering and upholding a domain name is sufficient within the meaning of article 21(1), thus proving overall bad faith.

Typo-squatting

Given that the "classic" type of typosquatting involves the registration of a domain name which is prone to misspellings, the Complainant has not, especially due to the Complainant's core market, the meaning of the Complainant's rights and conceptual differences, proven that the registration of the disputed domain name constitutes typosquatting.

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

For all the reasons stated above, the Complaint has proven confusingly similarity to the Complaint's rights, no legitimate interest in the disputed domain name and, finally, registration in bad faith.

Consequently, the Complaint is accepted and the disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SALAPAGE.COM**: Transferred

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2018-03-14

Publish the Decision