Decision for dispute CAC-UDRP-101892

Case number	CAC-UDRP-101892
Time of filing	2018-02-16 11:55:35
Domain names	jcdacaux.com

Case administrator

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

Complainant

Organization	JCDECAUX SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Lab-Clean Inc

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

In this proceeding, the Complainant relies on the following trademarks:
- JCDECAUX (word), International Trademark Registration No. 803987, registered on November 27, 2001,
- JCDECAUX (word) EU registration No. 004961454, registered on April 12, 2007;
- JCDECAUX (word) US registration No. 2359171, registered on June 20, 2000.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant states that it is the worldwide number one in outdoor advertising since 1964. For more than 50 years the Complainant has been offering solutions that combine urban development and the provision of public services in approximatively 1,785 in 56 countries. The Complainant is currently the only group present in the three principal segments of outdoor advertising market: street furniture, transport advertising and billboard.

The Complainant's Group is listed on the Premier Marché of the Euronext Paris stock exchange and is part of Euronext 100 index.

The Complainants owns several "JCDECAUX" trademarks and is also the owner of a large domain names portfolio, including the <jcdecaux.com> domain name registered since June 23, 1997.

The disputed domain name <jcdacaux.com> was registered on February 9, 2018 by the Respondent.

The Complainant states that the disputed domain name <jcdacaux.com> is confusingly similar to its trademarks since the disputed domain name contains an obvious misspelling of the Complainant's registered trademark and this represents a clear case of typosquatting.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME

The Complainant contends that the Respondent is not known as "JCDACAUX" and has not acquired trademarks mark rights in respect of the disputed domain name.

The Complainant states that the Respondent is not affiliated with nor authorized by the Complainant and is not related in any way to its business. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither a license nor an authorization has been granted to the Respondent to make any use of the Complainant's trademarks or apply for registration of the disputed domain name.

The disputed domain name points to an inactive website and the Complainant contends that the Respondent is not making any direct use of the disputed domain name, likely having registered it to create a likelihood of confusion with the Complainant's mark.

THE DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

Given the distinctiveness of the Complainant's trademark and its reputation, the Complainant states that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

Therefore, the Complainant claims that the disputed domain name was registered by the Respondent in order to take advantage of the good reputation the Complainant had built up in its trademarks, with the sole aim to create a likelihood of confusion with the Complainant.

According to the Complainant, the disputed domain name was registered to mislead the consumers. The Respondent intended to give an overall impression that the disputed domain name is associated with the Complainant. The current passive holding of the disputed domain name, in the context of typosquatting does not prevent a finding of bad faith registration and use.

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

A. Identical or confusingly similar with Complainant’s trademark

The Complainant owns numerous JCDECAUX trademark registrations in various jurisdictions.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), see paragraph 1.2.1: “Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case”.

The disputed domain name is an obvious misspelling of the Complainant’s JCDECAUX trademark where the letter “e” is substituted by the letter “a”.

As stated in WIPO Overview 3.0 “a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element” (see par. 1.9).

The Complainant’s trademark is clearly recognizable in the disputed domain name.

The suffix ".com" shall be disregarded under the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and

(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 and CAC Case No. 101284.

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows all reasonable inferences of fact in the allegations of the complaint to be deemed true (see paragraph 14(b) of the

Rules and Vertical Solutions Management, Inc. v. webnet-marketing, inc., FA 95095, National Arbitration Forum).

The disputed domain name is not actively used.

The Respondent is not affiliated with nor authorized by the Complainant in any way and there is no any other business connection between them.
The Respondent's name has no connection with the disputed domain name and there is no evidence whatsoever that could demonstrate any legitimate rights or interests of the Respondent in respect of the disputed domain name.

The Panel finds that the Complainant has shown a prima facie case that has not been rebutted by the Respondent and, therefore, satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.
These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.

There is a general agreement that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see par. 3.3 of the WIPO Overview 3.0).

One has to look at the circumstances of a case taking into account, in particular, the degree of distinctiveness or reputation of the Complainant's mark, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use and the implausibility of any good faith use to which the disputed domain name may be put (see e.g. Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; "Dr. Martens" International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc., WIPO Case No. D2017-0246; CAC Case No. 101435; CAC Case No. 101691 and CAC Case No. 101640).

The Panel finds that the Complainant's "JCDECAUX" trademark has indeed a strong reputation globally, the Respondent failed to provide any explanations regarding registration and use of the disputed domain name and it is hard, if not impossible, to imagine any legal use of the disputed domain name by the Respondent.

Besides, typosquatting itself can be considered as an additional argument in favor of finding bad faith registration and use ("typosquatting is not only a question of similarity, but can also be an indication of bad faith" – see CAC Case No. 101867).

The Panel also finds that, in addition to other bad faith considerations, this case falls within the provisions of paragraph 4(b)(iv) of the Policy especially if the disputed domain name was put into active use.

Since the disputed domain name virtually copies the Complainant's mark with a clear misspelling, the Respondent would be taking advantage of the Complainant's strong trademark by intentionally attempting to attract visitors to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or a product or service on the Respondent's website or location (see CAC Case No. 101486).

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **JCDACAUX.COM**: Transferred

PANELLISTS

Name	Igor Motsnyi

DATE OF PANEL DECISION 2018-03-26

Publish the Decision