Decision for dispute CAC-UDRP-101822

Case number	CAC-UDRP-101822
Time of filing	2018-05-21 13:34:08
Domain names	jaga.com

Case administrator

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

Complainant

Organization	JAGA N.V.

Complainant representative

Name	Bart Van Besien

Respondent

Name	Zofia Jadwiga Stepniak

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The disputed domain name is identical or confusingly similar to trademarks in which the Complainant has rights (paragraph 4 (a) (i) of the Policy).

FACTUAL BACKGROUND

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

In 1973, Complainant was incorporated as a Belgian limited liability company ("Naamloze Vennootschap" or "N.V." in Dutch; "Société Anonyme" or "S.A." in French). Complainant was first established under the name "JAGA" in 1962 by Jan and Gaston Kriekels. Complainant refers in this regard, inter alia, to a screenshot of its website at www.jaga.be, with a short history of Complainant's growth and evolution ("50 years of innovation").

For more than 50 years, Complainant has been a world leader in hybrid heating, cooling and ventilation systems. The Complainant exports its products to more than 50 countries worldwide.

The disputed domain name was registered on 22 October 1998 and is currently owned by the Respondent.

The disputed domain name is currently not in use. The domain name is a so-called "parked domain". It seems, to all probabilities, that the disputed domain name has in fact never been in use. For some years, the website available through the disputed domain name contained sponsored links (pay-per-click advertisements), and/or the message that the domain name was for sale ("Want this domain name?" "Make an anonymous offer NOW! (min. $200)".

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).

It was proven that the Respondent does not have any registered trademarks "JAGA", or similar registered marks. Complainant executed multiple searches in the various trademark registers but did not find any relevant registered trademarks under the name of the Respondent.

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).

The 'JAGA' trademarks of Complainant are distinctive and well-known around the world. Complainant submits that a Google search for the term 'JAGA" results in multiple search results linked to Complainant.

Also, at the time of registration of the disputed domain name (1998), Complainant had already a well-known business presence in the United States of America where Respondent is based. This included the use of the mark 'JAGA'. Complainant submits two folders for its USA market from the 1990s which substantiate that Complainant has been using the mark 'JAGA' in the USA since at least 1992 and 1993 respectively.

Also, during the first years after its creation, the disputed domain name was apparently put for sale. Complainant refers to screenshots of respectively 28 November 2001 and 28 March 2002. These exhibits prove that the website available via the disputed domain name contained the following messages: "Want this domain name?" "Make an anonymous offer NOW! (min. $200)". Again, this does not constitute a use of the domain name to offer goods or services in good faith.

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

1. The three essential issues under the paragraph 4(a) of the UDRP Policy are whether:

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 with respect to the disputed domain name; and

iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant has clearly proven that it is a long standing and successful company in the heating business. It is clear that its trademarks and domain names “jaga” are well-known.

The Complainant states that the disputed domain name is confusingly similar to its trademark.

The disputed domain name is therefore deemed identical or confusingly similar.

b) It has to be stressed that it was proven that there are no fair rights of the Respondent to the disputed domain name. The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) The disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder. Therefore there cannot be seen any legitimate interest of the Respondent.

It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain names were registered and used. It is therefore concluded that the disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **JAGA.COM**: Transferred

PANELLISTS

Name	**Dr. Vít Horáček**

DATE OF PANEL DECISION 2018-06-20

Publish the Decision