Decision for dispute CAC-UDRP-102118

Case number	CAC-UDRP-102118
Time of filing	2018-08-02 12:00:35
Domain names	weiswave.com

Case administrator

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

Complainant

Name	David Weis

Complainant representative

Organization	RODENBAUGH LAW

Respondent

Name	Michael Sokolik

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the common law trademark WEIS WAVE.

FACTUAL BACKGROUND

The Complainant, David Weis, is a trader and market analyst with 46 years experience in the futures markets. The Complainant is considered one of the world's leading practitioners of the Wyckoff Method, particularly as applied to intraday trading.
The Complainant has registered the disputed domain name on June 8, 2011, and launched the WEIS WAVE website and plugin at least as early as September, 2011.
The Complainant has invested copious amounts of time and money to promote the WEIS WAVE brand and trademark. The Complainant publicizes the WEIS WAVE product and mark through participation in conferences and webinars targeting traders with a particular focus on the Wyckoff Method.

On 12 April 2018, the Complainant discovers that the disputed domain name had been registered.

PARTIES CONTENTIONS

The Respondent states that WEIS WAVE is neither a brand nor a trademarked product. According to the Respondent, it is a copy of an old well known indicator called ZigZag, which is available for free on major trading platforms including but not limited to TradeStation, NinjaTrader 7, NinjaTrader 8, MetaTrader, and MetaStock. The Respondent also indicates that the fact of claiming that WEIS WAVE is an original indicator or a trademarked product is to lay false claims on the ZigZag indicator, which has existed long before the Complainant copied it.

As a conclusion, the Respondent states that the Complainant has been confusing customers into thinking that the WEIS WAVE plugin is an original product, and has been monetizing on this deception for many years.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to the trademark or service mark WEIS WAVE in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy). The allegation of the Respondent that WEIS WAVE is not a brand or a trademarked product, is not supported by any evidence. The documentary evidence used by the Complainant shows that the sign WEIS WAVE is being used to designate the origin of his services and is therefore a trademark.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, 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). The Respondent has indeed not asserted any rights or legitimate interests in respect of the disputed domain name. The Respondent merely stated that the trademark WEIS WAVE is a copy of an old, well known indicator called ZigZag, but the panel does see what this has to do with the Respondent's potential rights or legitimate interest in the use of the trademark WEIS WAVE.

The Complainant contends that the Respondent has made no use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. The Respondent is not making a legitimate non-commercial or fair use of the disputed domain name, and is not commonly known under the disputed domain name. The Complainant states that no business partnership exists between him and the Respondent that would allow the latter to use the disputed domain name. This has not been disputed by the Respondent.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, 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).

The Respondent not only registered the disputed domain name many years after Complainant’s rights in the WEIS WAVE trademark were established, but also is intentionally using the disputed domain name in bad faith to promote Respondent’s directly competing product. The website under the disputed domain name resolves to a website with a list of services, platforms and links leading to a website that promotes the competing MBox Wave system of the Respondent, and ultimately to <mboxwave.com> which offers a competitive product for sale.

The Respondent is attempting to create a likelihood of confusion as to the source, sponsorship, affiliation and/or endorsement of his website by making use of Complainant’s WEIS WAVE trademark without his authorization. Moreover, the website of the Respondent prominently displays in bold text a link that states, “For more information visit http://mboxwave.com”, which is the Respondent’s own website that promotes and sells competing products. The Respondent's website constiutes evidence that the Respondent is attempting to pose as and/or infer a connection or sponsorship with the Complainant in an effort to cause confusion.

The use of a confusingly similar domain for the purported purpose of comparative advertising has routinely been found to be an indicator of bad 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

For the reasons set out above, the Panel finds that the disputed domain name is confusingly similar if not identical to the Complainant's trademark.

The Complainant has, to the satisfaction of the Panel, 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).

The Complainant has, to the satisfaction of the Panel, 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).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **WEISWAVE.COM**: Transferred

PANELLISTS

Name	**Tom Joris Heremans**

DATE OF PANEL DECISION 2018-09-20

Publish the Decision