Decision for dispute CAC-UDRP-102193

Case number	CAC-UDRP-102193
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Domain names	globefountain.com

Case administrator

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

Complainant

Name	Lukáš Bayer

Complainant representative

Name	JUDr. Matěj Sedláček

Respondent

Organization	HugeDomains.com

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

In these proceedings, the Complainant relies on the following trademarks:

- GLOBE FOUNTAIN & device, Czech Registration No. 325496, registered with priority as of February 13, 2012, in the name of Lukas Bayer (the Complainant).
- GLOBE FOUNTAIN & (another) device, Czech Registration No. 365898, registered with priority as of July 10, 2017, in the name of Lukas Bayer (the Complainant).

It is to be noted that, the Complainant has also filed a couple of other Czech trademark applications (not registered, to present), as well as an International Application at WIPO, but only in October 2018 (i.e. at a posterior date to the registration of the disputed domain name).

FACTUAL BACKGROUND

The Panel notes that, apart from the list of goods/services of his trademark registrations, there is no indication by the Complainant, a Czech natural person, as to his exact business and/or background/activity in the marketplace and/or in general.

The Respondent is a professional domain name reseller, who owns a relevant site, claiming to deal with thousands of domain names. It is based in the USA.

The Complainant owns a few (mainly Czech) trademarks for "GLOBE FOUNTAIN", with various devices, the earliest dating back to 2012. It also owns a couple of related domain names, like <globefountain.cz>, according to information provided by the Respondent and not refuted by the Complainant.

The disputed domain name <globefountain.com> was registered on July 14, 2018 and is currently owned by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends, in the sense of paragraph 4(a) of the Policy, that the disputed domain name is confusingly similar to its GLOBE FOUNTAIN trademark; that the Respondent lacks rights or legitimate interests in the disputed domain name, and; that the disputed domain name has been registered and is being used in bad faith.

For all these reasons, the Complainant requests that the disputed domain name is transferred to him.

RESPONDENT:

The Respondent contends, on the contrary, that the Complainant has no trademark rights on the disputed domain name; that the Respondent has rights and legitimate interests to the disputed domain name, and; that the Respondent has registered the disputed domain name within the framework of its usual business practice, to register domain names for subsequent sale to third parties. The Respondent is also claiming that the Complainant has shown behavior consistent with reverse domain name hijacking.

RIGHTS

Before launching itself into the usual threefold test, according to paragraph 4(a) of the Policy, the Panel needs to address the issue of the arguments filed by the Complainant and Respondent after the Complaint and the Response had been filed. The Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") stipulate under Rule 10:

10 General Powers of the Panel

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(…)

(d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

On another occasion (Rule 12), the Rules give the Panel the right to even request on its own initiative additional information from the Parties:

12 Further Statements

In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties.

With the above in mind, the Panel decides to admit, in its sole discretion, the additional arguments presented by the Complainant and Respondent. Such admission will enable the Panel to have a more complete appreciation of the positions of the Parties, in order to reach its decision.

Having said this, the Panel will now proceed with the examination of the substance of the matter.

Rights

The disputed domain name consists of the Complainant's whole trademark (GLOBE FOUNTAIN), at least its word part. Under normal circumstances, this fact could be considered as designating the Complainant and would, thus, violate his prior trademark rights.

As far as the gTLD ".com" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

However, the Panel is troubled by the fact that, the Complainant has not shown any use of his trademarks, at all, let alone any reputation in his field (which also remains quite unknown to the Panel and, allegedly, to the Respondent, as well).

Further, while the national-only protection of the Complainant’s marks should not be a problem per se, the Respondent’s defence that it could not easily know of the prior existence of the Complainant’s marks at the time of registration of the disputed domain name - also because of their non-use - has gained ground among the Panel.

In conclusion, the Panel finds that the Complainant has not shown, to the satisfaction of the Panel, that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has exclusive rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

As a result of the above conclusion on the first requirement of paragraph 4(a) of the Policy, in light of the findings under the third element below, the Panel considers not necessary this second element. The Panel will, therefore, not examine the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

As a result of the above conclusion on the first requirement of paragraph 4(a) of the Policy, the Panel considers not necessary to examine in depth this third element.

Perhaps a fair comment would be that the Respondent has acted within the framework of his regular, commercial domain business, i.e. to offer domains for money. Whatever the circumstances invoked by the Complainant may be, the fact remains that the Complainant omitted to uphold his registration by not paying the prescribed renewal fee. The Respondent took advantage of the situation that the domain name became available and simply did what he would do with any domain name in such case, i.e. he offered it for sale (not to the Complainant, but to the market). There is no evidence that the Respondent targeted specifically the disputed domain name.

As a result of the above conclusion, the Panel finds that the Complainant has not satisfied the requirement under paragraph 4(a)(iii) of the Policy.

Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if “after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”.

In this case, and taking into account that a finding of Reverse Domain Name Hijacking ultimately hinges on the conduct of the Complainant, the Panel in this case has found no evidence of harassment or attempt to mislead the Panel that would justify such finding.

Therefore, the Panel does not find that the Complainant attempted Reverse Domain Name Hijacking within the meaning 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. The Complainant submitted an unsolicited Nonstandard Communication and the Respondent submitted an unsolicited Nonstandard Communication. For the purposes of this Decision, the Panel will consider both these submissions under its sole discretion.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has failed to prove that it has trademark rights, sufficient for the purposes of the Policy. Additionally, the Panel finds that the Complainant did not satisfy the bad faith requirement under the Policy. Finally, the Panel does not find that the Complainant attempted Reverse Domain Name Hijacking within the meaning of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **GLOBEFOUNTAIN.COM**: Remaining with the Respondent

PANELLISTS

Name	**Sozos-Christos Theodoulou, Thomas Hoeren, Prof. Dr. Lambert Grosskopf, LL.M.Eur.**

DATE OF PANEL DECISION 2018-12-06

Publish the Decision