Decision for dispute CAC-UDRP-102248

Case number	CAC-UDRP-102248
Time of filing	2019-01-02 09:20:41
Domain names	ganserconsulting.com

Case administrator

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

Complainant

Name	Niels Ganser

Respondent

Organization	DomainNameNexus.com - This Domain is For Sale

OTHER LEGAL PROCEEDINGS

This Panel is not aware of any of other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of a registered EU trademark No. 017868273 “ganser consulting” <device> claiming protection in class 35 and 42 and registered on 26 June 2018.

Additionally, the Complainant registered the domain <ganserconsulting.eu> on 8 January 2018.

FACTUAL BACKGROUND

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

The Complainant provides software engineering and consulting services. The Complainant's services are offered worldwide while they are currently principally taken up by clients in the United States of America, the United Kingdom, and Germany.

The Complainant has provided these services under the name "ganser consulting" since January 2017. Since June 2018, the Complainant also holds the registered trademark 017868273 in the European Union, the textual representation of which is "ganser consulting".

The Respondent has registered the domain <ganserconsulting.com>, which is identical to the textual representation of the aforementioned trademark except for the removal of a single whitespace in between the words "ganser" and "consulting" as well as the addition of the TLD ".com". As such, the Respondent's domain is confusingly similar, or indeed virtually identical, to the Complainant‘s registered trademark.

The Respondent has registered the disputed domain name at a time at which the Complainant's aforementioned trademark was already registered and fully published.

All indications are that the disputed domain name was registered solely for the purposes of selling it. The domain does not host any other content and the Respondent's organization's name in the WHOIS data is "DomainNameNexus.com - This Domain is For Sale".

The price listed for the domain (US$ 3,250) is much greater than the underlying cost of the registration. Thus, the disputed domain name was clearly registered to speculate; in other words: to sell it for great profit when a legitimate user eventually purchases it.

The Complainant has received 7 e-mails offering to purchase the domain at auction before the Respondent registered the disputed domain name. It is unclear whether these e-mails were sent by the same party that now holds the domain as the latter was registered using a privacy or proxy registration service.

The Complainant has e-mailed a cease and desist letter to the disputed domain name holder prior to filing this complaint. This e-mail went unanswered.

In conclusion, and as this complaint relates to the UDRP Policy (https://www.icann.org/):

a) As evidenced by the attached trademark registration, the disputed domain name is "confusingly similar", indeed nearly identical, to the Complainant's trademark "ganser consulting" per paragraph 4 (a) (i) of the Policy.

b) As evidenced by the lack of use of the disputed domain name other than offering it for sale, the Respondent does not have any "rights or legitimate interests in respect of the domain name" per paragraph 4 (a) (ii) of the Policy. In particular, the Respondent is neither:

b.i) using "the domain name in connection with a bona fide offering of goods or services" per Article 4 (c) (i) of the Policy;

b.ii) nor have they "been commonly known by the domain name" per paragraph 4 (c) (ii) of the Policy;

b.iii) nor are they "making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain" per paragraph 4 (c) (iii) of the Policy.

c) As evidenced above, the disputed domain name was registered solely for the purposes of selling it at an inflated price which constitutes Use in Bad Faith under Article 4 (a) (iii) of the Policy. In particular there are "circumstances indicating that you have registered […] the domain name primarily for the purpose of selling […] the domain name registration to the complainant who is the owner of the trademark […] or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name" per paragraph 4 (b) (i) of the Policy.

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

From the factual background it is clear that the disputed domain name was transferred and/or sold to the Respondent, as the e-mail offers to pre-register or buy the disputed domain pre-dates the official registration date of 28 November 2018. Consequently, the e-mail offers cannot be taken directly into account and this Panel must base its decision on the facts present on 28 November 2018 and in the complaint.

As mentioned above the Complainant is the proprietor of a registered EU trademark No. 017868273 “ganser consulting” <device> registered on 26 June 2018 and the disputed domain name <ganserconsulting.eu> registered on 8 January 2018.

Furthermore, the Complaint, which the Respondent was given a chance to comment on, clearly shows that the disputed domain name was offered for sale or pre-registration to the Complainant and that the Complainant has sent a Cease and Desist letter, arguing that the disputed domain name was confusingly similar to both the Complainant’s trademark and domain name.

The Respondent failed to comment on the Complaint and, although this does not – in itself – constitute bad faith, the circumstances, especially the material available with the complaint and the fact that the disputed domain name is still advertised for sale, is sufficient to prove a Prima Facie case.

In this Panels opinion, the Respondent has no legitimate rights to the disputed domain name and, consequently, the Complaint is accepted.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **GANSERCONSULTING.COM**: Transferred

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2019-02-11

Publish the Decision