Decision for dispute CAC-UDRP-102314

Case number	CAC-UDRP-102314
Time of filing	2019-01-23 10:15:45
Domain names	wwwshowroomprive.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	SHOWROOMPRIVE.COM

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Super Privacy Service LTD c/o Dynadot

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

The Complainant is among others the owner of the trademarks as follows:

- French trademark SHOWROOMPRIVE® No. 3494511 registered on April 13, 2007;
- European trademark SHOWROOMPRIVE.COM® No. 5761374 registered since March 5, 2007;
- European trademark SHOWROOMPRIVE.COM® No. 11008257, registered since July 2, 2012.

The Complainant owns the domain name <showroomprive.com> registered on April 27, 2006.

The disputed domain name <wwwshowroomprive.com> was registered on December 31, 2018 and resolves to a parking page with pay-per-click links related to the Complainant and its activities.

FACTUAL BACKGROUND

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

SHOWROOMPRIVE.COM was created in 2006. It is an innovative European player in the online private sales.

The Complainant offers a daily selection of more than 2,000 brand partners on its mobile apps or online through its main website <www.showroomprive.com> in France and nine other countries.

It is listed on the Euronext Paris, and reported gross turnover of over 900 million euros in 2017, corresponding to net revenues of 655 million euros, 18% of its internet revenues in international markets.

PARTIES CONTENTIONS

Any administratively compliant Response has not been filed.

COMPLAINANTS' CONTENTIONS:

I. The Complainant states that the disputed domain name <wwwshowroomprive.com> is confusingly similar to its trademarks SHOWROOMPRIVE.COM® while the trademark is included in its entirety in the disputed domain name (Paragraph 4(a)(i) of the Policy).

The Complainant claims that the addition of the letters “WWW” (an abbreviation for “World Wide Web”) to the trademark of the Complainant is not sufficient to avoid the likelihood of confusion with the Complainant’s trademark and that addition of the letters “www” to the beginning of a disputed domain name does not distinguish the domain name of Complainant.

The Complainant recalled the FORUM Case No. FA 1714579, Citizens Financial Group, Inc. v. Paul Taylor.

II. The Complainant states that The Respondent does not have any rights or legitimate interest in the disputed domain name (Paragraph 4(a)(ii) of the Policy).
The Complainant asserts that the Respondent is not known as the disputed domain name because the Respondent is not commonly known by a disputed domain name. The Whois information about the Respondent is not similar to the disputed domain name, it is not related in any way with the Complainant, the Complainant does not carry out any activity for, nor has any business with the Respondent, it has been granted neither license nor authorization to the Respondent to make any use of the Complainant’s trademarks or apply for registration of the disputed domain name by the Complainant. Moreover, the disputed domain name redirects to a parking page with pay-per-click links related to the Complainant and its activities. This use of a parking page may not be considered a bona fide offering of goods or services or legitimate noncommercial or fair use.

The Complainant recalled the
WIPO Case No. D2003-0455, Croatia Airlines d .d. v. Modern Empire Internet Ltd.,
FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group,
FORUM Case No. FA 699652, the Braun Corporation v. Wayne Loney,
FORUM Case No. FA 1770024, Samuel J. McRoberts v. DOMAIN ADMINISTRATOR / NAME ADMINISTRATION INC.,
CAC Case No. 102001, Intesa Sanpaolo S.p.A. v. Ciro Migliaccio.

III. The Complainant states that the disputed domain name has been registered and is being used in bad faith (Paragraph 4(b) of the Policy).

The Complainant contended the distinctiveness of its trademarks and undisputed reputation as well its registered domain name, so that it is likely that the Respondent has registered the disputed domain name with full knowledge of the Complainant´s trademarks and uses it for the purpose of misleading and diverting Internet traffic.

The Complainant recalled the
WIPO Case D2004-0673 - Ferrari S.p.A v. American Entertainment Group Inc.,
WIPO Case No. D2018-0564, Dubizzle Limited BVI v. Syed Waqas Baqir,
WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC), NAF Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group,
FORUM Case No. FA 699652, the Braun Corporation v. Wayne Loney,
FORUM case No. FA 1770024, Samuel J. McRoberts v. DOMAIN ADMINISTRATOR / NAME ADMINISTRATION INC.,
CAC Case No. 102001, Intesa Sanpaolo S.p.A. v. Ciro Migliaccio,
CAC Case No. 102109, SHOWROOMPRIVE.COM v. Domain Privacy Guard Sociedad Anónima Ltd,
WIPO Case No. D2018-0564, Dubizzle Limited BVI v. Syed Waqas Baqir,
WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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. THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The disputed domain name is confusingly similar to the Complainant’s trademarks “SHOWROOMPRIVE®" and “SHOWROOMPRIVE.COM®" while the trademark is included in its entirety in the disputed domain name.

The disputed domain name reproduced the well-known trademark “SHOWROOMPRIVE” with addition of ".COM" and the well-known trademark “SHOWROOMPRIVE.COM®" by addition of a prefix “WWW”.

The disputed domain name differs from the Complainant’s trademark “SHOWROOMPRIVE” by the addition of the top-level domain ".com" but it does not prevent the likelihood of confusion between the disputed domain names and the Complainant ´s trademarks. It is well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is confusingly similar. Therefore, the top-level domain might be considered irrelevant in assessing confusing similarity between a trademark and a disputed domain name.

The addition of the letters “WWW” (an abbreviation for “World Wide Web”) is not sufficient to avoid the likelihood of confusion with the Complainant’s trademarks and the addition of the letters "www" does not distinguish the disputed domain name of Complainant´s trademarks.

The Panel therefore finds that the disputed domain name is 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).

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

The Respondent does not correspond to the name nor the Respondent has any other rights to the disputed domain name. The use of the trademarks "SHOWROOMPRIVE®" and “SHOWROOMPRIVE.COM®" has to be authorized by the Complainant. The Respondent is not known under the disputed domain name. The Whois information shows that the disputed domain name is registered with DYNADOT LLC which is obviously different from the trademarks of the Complainant. The Respondent has been granted neither license nor authorization to make any use of the Complainant’s trademarks or apply for registration of the disputed domain name by the Complainant. Moreover, the disputed domain name redirects to a parking page with pay-per-click links related to the Complainant and its activities. This use of a parking page may not be considered a bona fide offering of goods or services or legitimate noncommercial or fair use.

The Panel therefore finds 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).

C. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant’s registered trademarks "SHOWROOMPRIVE®" and “SHOWROOMPRIVE.COM®" are distinctive and well-known trademarks. The Respondent should have had knowledge of the Complainant’s trademarks at the time of registration of the disputed domain name because it has registered a disputed domain name that is confusingly similar to them. Moreover, if the Respondent should had carried only a basic Google search in respect of the wordings “SHOWROOMPRIVE.COM" and "SHOWROOMPRIVE", the same would had led the Respondent to all obvious references to the Complainant. This is a clear evidence of registration of the disputed domain name in bad faith.

The passive holding of a disputed domain name with knowledge that this domain name infringes another party’s trademark rights is the evidence of bad faith registration and use. The Respondent would have used the disputed domain name for the purpose of misleading and diverting Internet traffic. The reputation of the Complainant’s trademarks should have barred the Respondent to register the disputed domain name.

The Panel is therefore convinced that the overall circumstances of this case suggest that the disputed domain name was registered and is being used in bad faith and the Complainant has satisfied 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. **WWWSHOWROOMPRIVE.COM**: Transferred

PANELLISTS

Name	**JUDr. Vojtěch Trapl**

DATE OF PANEL DECISION 2019-02-22

Publish the Decision