Decision for dispute CAC-UDRP-102225

Case number	**CAC-UDRP-102225**
Time of filing	**2018-11-14 09:44:16**
Domain names	**bluelightcard.com**

Case administrator

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

Complainant

Organization	**Blue Light Card Ltd**

Respondent

Name	**Kung Chen Chang**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant relies on a UK registered trademark, the UK trademark BLUE LIGHT CARD No 00003288728, registered on February 8, 2018 in Class 35.

It also relies on its trade name and company name BLUE LIGHT CARD.

No information is provided on the disputed domain name <bluelightcard.com>.

FACTUAL BACKGROUND

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

Blue Light Card is a LTD company incorporated in the UK on April 30, 2008 under the registration number 06581540.

The Complainant filed the national UK trademark BLUE LIGHT CARD No 00003288728, registered on February 8, 2018 in Class 35.

It contends that the registration of the trademark is subsequent to the registration of the disputed domain name.

The Complainant explains that it has tried to remedy the situation by contacting the Respondent directly but that it has not heard anything back in relation to this.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Identical or confusing similarity

The Complainant asserts that the disputed domain name is identical and confusingly similar to the protected trademark. It explains that there are phonetical and visual similarities, and that the mark is identical to the trade name.

The Complainant contends that its registered trademark is misrepresented in the disputed domain name.

No rights or legitimate interests

The Complainant contends that the disputed domain name is being used as a holding page and has no relevance to any business trading under this name. It further asserts that the disputed domain name is used to give access to parking website.

The Complainant asserts that there is a diversion of consumers and a comparative advertising.

It appears the Respondent has used the disputed domain name to advertise unrelated articles to people searching for Blue Light Card. The site is not being used for any purpose that has any value or meaning to the name Blue Light Card.

Bad faith

The Complainant asserts that the disputed domain name has been registered and is being used in bad faith.

The Complainant claims that the Respondent had a prior knowledge of potential rights and that the disputed domain name is held for purposes of selling, licensing or renting to a competitor of the Complainant and to the public, that this was the primary purpose and that the disputed domain name is not used for anything else.

It says that the disputed domain name is used to give access to a parking website and that internet users are attracted for commercial gain by creating a likelihood of confusion with the Complainant.

The Complainant explains that it is therefore purely being used to generate income in bad faith by impersonating an operational company.

It further asserts that it has caused confusion for its members who believed that they were on the Complainant’s website.

The Complainant contends that the GDPR becoming a legal requirement in the UK, the disputed domain name should not be misused and should be owned and used by its 10 years company.

RIGHTS

Paragraph 4(a)(i) of the Policy provides: “your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights”.

The Complainant has to prove that the disputed “domain name is identical or confusingly similar to a trademark or service mark” in which the Complainant has rights.

Therefore, the right opposed on the company name is irrelevant.

The Complainant has submitted evidence of its registered UK trademark BLUE LIGHT CARD.

The UDRP requests to prove a right on a trademark or a service mark. It does not provide that the trademark needs to be a prior right.

The disputed domain name entirely incorporates the Complainant's BLUE LIGHT CARD trademark.

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical 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

Pursuant to paragraph 4(c) of the Policy, a Respondent may establish rights to or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

The Panel first reminds that the Complainant has the onus of proof.

Paragraph 9 (a) on "Panel decision" of the CAC's UDRP Supplemental Rules of the Czech Arbitration Court provides that:

"The Panel decisions will meet the requirements set forth in Art. 15 of the Rules and will comply with all formal requirements contained in these Supplemental Rules. Each Panel decision shall contain a brief summary in English".

According to Par. 15 (a) of the Rules "Panel Decisions":

"(a) A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

The Complaint is poorly drafted and the Complainant merely asserts that the disputed domain name gives access to a parking page. It does not prove that it has no relevance to any business trading under this name.

The BLUE LIGHT CARD trademark was filed in 2018 and there is no information provided on the date of registration of the disputed domain name.

The Complaint has to be filed with all related annexes.

In this case only two annexes were filed: an incorporation certificate of the Complainant and an online document from the trademark UK database.

Therefore, the Complainant failed to prove 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).

BAD FAITH

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of a domain name. It provides that:

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a disputed domain name in bad faith:

(i) circumstances indicating that the respondent has registered or the respondent has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location."

As here above explained, the onus of proof lies on the Complainant.

The Complaint merely asserts facts without even explaining why the disputed domain name is registered and being used in bad faith.

Neither the Whois of the disputed domain name nor a screen shot of the website under the disputed domain name are produced.

Given the circumstances of the case, the Panel considers that the Complainant failed to prove the bad faith registration and the bad faith use of the disputed domain name.

The Complainant has not 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

The Complainant has the onus of proof and it failed to prove that the three criteria required by the UDRP procedure are met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

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

PANELLISTS

Name	**Marie-Emmanuelle Haas, Avocat**

DATE OF PANEL DECISION 2019-03-05

Publish the Decision