Decision for dispute CAC-UDRP-102365

Case number	CAC-UDRP-102365
Time of filing	2019-04-03 13:42:33
Domain names	sidel-grovp.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	SIDEL PARTICIPATIONS

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	Christopher Luna

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant has provided a list of its worldwide registrations for the trademark SIDEL. Among these, the Complainant has provided full details of the following trademark registrations, as follows:

- SIDEL, US registration No. 2337313, filed on May 7, 1998 and registered on April 4, 2000, claiming first use in commerce since 1968, and claiming protection for goods and services in classes 7, 40 and 42;

- SIDEL, international registration No. 858530, of May 6, 2005, designating several countries, including the US, covering goods and services in classes 7, 9, 37, 41, 42.

FACTUAL BACKGROUND

According to the Complaint, Sidel International AG is a world leading provider of production equipment and services for liquids in PET, can and glass, and for packaging beverages enjoyed by millions of consumers around the world every day. In 2017, the Complainant reached 1,4 billion euros in global net sales and over 5 thousand employees in more than 80 countries.

Due to its extensive use, advertising and revenues associated with the Complainant's trademarks worldwide, said trademarks enjoy a high degree of renown in many countries, including in the US where the Respondent is located. In the US, the Complainant has a strong presence, including with a dedicated website, at <sidelsystems.com>.

The Complainant is the owner of several domain names containing the trademark SIDEL, such as <sidel.com>, created in 2016 and <sidel.us>, created in 2012. The Complainant uses these domain names to connect to a website through which it informs potential customers about its SIDEL trademark and its products and services.

The disputed domain name was registered on September 6, 2018.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant contends that the disputed domain name is confusingly similar to the SIDEL trademark as it fully incorporates it, followed by a hyphen and a generic term "grovp", which is likely to be an intended typo of the word "group".

The Complainant further contends that the Respondent lacks rights and legitimate interests in the disputed domain name as it does not appear that the Respondent is commonly known by the disputed domain name, or has an interest over the disputed domain name or over the term "sidel". The disputed domain name is not associated with an active website; therefore, there is no evidence proving that the Respondent is using the disputed domain name in connection with a bona fide offering of goods and services.

Lastly, the Complainant contends that the Respondent registered and used the disputed domain name in bad faith, in view of the fact that the trademark SIDEL is highly distinctive and well-known, that the Respondent failed to reply to a cease and desist letter of the Complainant and subsequent reminders, and that any good faith use of the disputed domain name would be implausible.

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

Before entering into the merits of the proceeding, the Panel wishes to make the following preliminary observation.
In introducing the Complainant and its activity, the Complaint refers to the company "Sidel International AG" and defines this company as "the Complainant". However, this proceeding has been entered in the name of "Sidel Participations", not in the name of "Sidel International AG". Therefore, the Complainant is "Sidel Participations", which is also the owner of the trademarks upon which the UDRP has been based.

Nowhere in the Complaint is the relation between "Sidel Participations" and "Sidel International AG" explained. The Panel would have much appreciated a few lines of explanations of the relationship between these two companies, in order to gather a clearer picture of the situation.

Since the factual situation illustrated by the Complainant is somewhat nebulous, in accordance to the powers conferred to the Panel under the Policy, the Panel has made some limited searches to try to clear the possible relationship between the two above-mentioned companies. However, the Panel's search has not clarified the situation, except for the fact that Sidel is a group companies, spread around the world, of which presumably Sidel Participations is the holding company.

Nonetheless, as the Complainant belongs to a group of companies, the SIDEL trademark registrations mentioned in the Complaint are in the name of "Sidel Participations", likewise the domain name <sidel.us> (while the domain name <sidel.com> is in the name of a different company, most probably also belonging to the Sidel group), the Panel finds that the lack of clarification of the relationship between "Sidel Participations", on the one side, and "Sidel International AG", on the other side, does not have an impact on the Panel's decision in this case. Therefore, the Panel will consider that all factual arguments included in the Complaint and referring to "Sidel International AG" and/or to the Complainant as defined in the Complaint, should also (or only) be ascribed to the effective Complainant, namely to "Sidel Participations".

1) The disputed domain name is identical or confusingly similar to a Complainant's trademark

The Panel is of the opinion that the Complainant's trademark SIDEL and the disputed domain name are confusingly similar one another. This is due to the fact that the Complainant's trademark is entirely reproduced in the disputed domain name and is followed by the non-distinctive component "-grovp". The latter is a clear misspelling of the term "group", which reflects the fact that the Complainant is organized in a group of companies. Thus, the addition of the generic term “grovp”, to the Complainant’s trademark, in the disputed domain name does not avoid a finding of confusing similarity (for a similar case, see Tetra Laval Holdings & Finance S.A. v. Jason Wolfe, Geagr, WIPO Case No. D2017-0831).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

2) The Respondent's lack of rights or legitimate interests in the disputed domain name

The second condition to be proved in order to succeed in a UDRP proceeding is that the Respondent lacks rights or legitimate interests in the disputed domain names.

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore, a complainant must make a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

The Panel finds that the Respondent was not authorized to reflect the Complainant’s trademark in the disputed domain name, and that the Respondent does not appear to have been commonly known by the name “sidel”.
Moreover, at the time of the filing of the Complaint, the disputed domain name did not lead to an active website.
The Complainant sent to the Respondent a cease and desist letter and several reminders, to which the Respondent never replied. Therefore, the Respondent failed to provide evidence in support of his rights or legitimate interests in the disputed domain name. Likewise, the Respondent failed to submit a Response, and therefore lost another opportunity to demonstrate his entitlement to the registration of the disputed domain name.

In view of all the circumstances mentioned above, the Panel considers that the Complainant has made a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Thus, the Panel is satisfied that also the second requirement under the Policy is met.

3) Bad faith

The third and last requirement to be proved under the Policy to succeed in a UDRP proceeding is that the Respondent registered and used the disputed domain name in bad faith.

The Panel agrees that the Respondent was aware of the Complainant's trademark and activity at the time he registered the disputed domain name. SIDEL is an invented word that enjoys distinctive character. Moreover, in the disputed domain name, the Complainant's trademark is followed by the term "grovp", which is an obvious misspelling of the generic term "group". This word is often associated to the Complainant's trademark in its business communications and website. As such, the registration of the disputed domain name cannot have occurred by chance.
As stressed by the Complainant, the Complainant operates worldwide, including in the US, which is where the Respondent is based. This is additional evidence of the fact that the Respondent was aware of the disputed domain name at the time of its registration.

The disputed domain name does not lead to an active website. However, under certain circumstances, passive holding of a domain name does not prevent a finding of bath faith. In this respect, the following factors (without limitation) have been considered relevant in applying the passive holding doctrine : (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

In the instant case, as mentioned above, the SIDEL trademark is certainly highly distinctive and does not appear to have an inherent meaning. According to some quick Internet searches, it appears that the trademark SIDEL is exclusively associated with the Complainant and that its use is spread worldwide. Therefore, it is possible that the Complainant's trademark enjoys at least a certain level of reputation.
Moreover, the Respondent failed to reply to the Complainant's cease and desist letter and subsequent reminders and did not submit any Response in this proceeding. As such, the Respondent did not submit any argument that could demonstrate that the registration and use of the disputed domain name has been made in good faith. In view of the above, and considering the Respondent's lack of legitimate interests and rights in the disputed domain name, the Panel cannot imagine any plausible good faith use of the disputed domain name by the Respondent.

All considered, the Panel concludes that the disputed domain name was registered and has been used in bad faith.

Therefore, the Panel is satisfied that also the third and last condition under the Policy is met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SIDEL-GROVP.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2019-05-14

Publish the Decision