Decision for dispute CAC-UDRP-102525

Case number	CAC-UDRP-102525
Time of filing	2019-06-11 11:42:15
Domain names	jcdecaus.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	JCDECAUX SA

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Stepina

OTHER LEGAL PROCEEDINGS

This Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several registered trademarks including international trademark registration JCDECAUX n° 803987 registered since 27 November 2001.

FACTUAL BACKGROUND

In the absence of a Response, the facts available are those which have been submitted by the Complainant and not rebutted:
The Complainant has carried on business providing outdoor advertising marketing services since 1962. It provides 1,061,200 advertising panels in airports, rail and metro stations, shopping malls, on billboards and street furniture.
The Complainant's group is listed on the Premier Marché of the Euronext Paris stock exchange and is part of Euronext 100 index, employing a total of 13,030 people in more than 80 different countries and 4,030 cities which has generated revenues of €3,619m in 2018.
As stated above, the Complainant is the owner of several registered trademarks including the above-mentioned international trademark registration JCDECAUX n° 803987 registered since 27 November 2001.
The Complainant is also the owner of a large portfolio of Internet domain names that incorporate its name and mark JCDECAUX including <jcdecaux.com> which has been registered since 23 June 1997.
The disputed domain name <jcdecaus.com> was registered on 3 June 2019 and is currently inactive.

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).

The Complainant relies on its rights in the above-referenced registered trademark JCDECAUX and submits that the disputed domain name <jcdecaus.com> is confusingly similar to the Complainant's protected mark JCDECAUX, arguing that the substitution of the letter "x" by the letter "s" and the use of the gTLD .com extension are not sufficient elements to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant submits that this is a clear case of "typosquatting" because the disputed domain name contains an obvious misspelling of the Complainant's trademark and the substitution of the letters "s" for "x" does not overall impression of the designation as being connected to the trademark JCDECAUX.
Previous panels have found that the slight spelling variations does not prevent a domain name from being confusing similar to the complainant's trademark. Please see prior UDRP case:
- CAC Case No. 101990, JCDECAUX SA v. Gemma Purnell <jcdeceux.com> ("The Panel agrees with the Complainant that the disputed domain name is confusingly similar to the Complainant's trademarks. The disputed domain name directly and almost entirely incorporates the Complainant's "JCDECAUX" trademark, except for the exchange of one letter. The Panel agrees with prior panel decisions, that it is not sufficient to replace a single letter of a trademark in order to exclude the risk of confusion (see e.g. CAC Case No. 101892, JCDECAUX SA v. Lab-Clean Inc.) at least in this case.");
- CAC Case No. 101892, JCDECAUX S.A. v. Lab-Clean Inc <jcdacaux.com> ("The disputed domain name is an obvious misspelling of the Complainant's JCDECAUX trademark where the letter "e" is substituted by the letter "a". As stated in WIPO Overview 3.0 "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element" (see par. 1.9). The Complainant's trademark is clearly recognizable in the disputed domain name.").

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).

The Complainant submits also that the Respondent has no rights or legitimate interest in the disputed domain name arguing that as in Croatia Airlines d.d. v. Modern Empire Internet Ltd. WIPO Case No. D2003-0455, the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests and once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name.
The Complainant submits that the Respondent is not identified in the WHOIS database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain names, citing for instance Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group NAF Case No. FA 1781783 relating to <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).").
The Complainant argues that the Respondent is not affiliated with nor authorized by the Complainant or to its business in any way; no authorization has been granted to the Respondent to make any use of the Complainant's trademark JCDECAUX, or apply for registration of the disputed domain name by the Complainant; and that the disputed domain name is a typosquatted version of the trademark JCDECAUX. The Complainant cites in this regard Spotify AB v. The LINE The Line / The Line NAF Case No. 1765498 ("Complainant contends the <spotfy.com> domain name differs from the SPOTIFY mark only by the omission of the letter "i" in the mark, and is thus a classic case of typosquatting. […] The Panel finds that Respondent's registration of the domain name is typosquatting and indicates it lacks rights and legitimate interests in the

domain name per Policy ¶ 4(a)(ii).") and The Hackett Group, Inc. v. Brian Herns / The Hackett Group NAF Case No. 1597465 ("The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy ¶ 4(a)(ii).").
Furthermore the Complainant points out that the disputed domain name is currently inactive and therefore, the Complainant contends that Respondent did not make any use of disputed domain name since its registration, and argues that this confirms that the Respondent has no demonstrable plan to use the disputed domain name, demonstrating a lack of legitimate interests in respect of the disputed domain name.

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).
The Complainant submits that the disputed domain name has been registered and is being used in bad faith arguing that given the distinctiveness of the Complainant's trademark and reputation, the Complainant can state that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark JCDECAUX. The registration of the disputed domain name <jcdecaus.com>, which contains an obvious misspelling of the Complainant's trademark JCDECAUX illustrates that the registration was intentionally designed to be confusingly similar with the Complainant's trademarks
Furthermore, the Complainant submits because that disputed domain name is inactive, the Respondent has not demonstrated any activity in respect of the disputed domain name; it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law; and prior panels under the Policy have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. The Complainant cites in this regard the decisions inTelstra Corporation Limited v. Nuclear Marshmallows WIPO Case No. D2000-0003, and CBS Broadcasting, Inc. v. Dennis Toeppen WIPO Case No. D2000-0400.

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 provided convincing evidence of its ownership of the JCDECAUX name and mark through use in trade and its abovementioned registered trademarks.
The disputed domain name is clearly confusingly similar to the Complainant's mark as it consists solely of the mark in its entirety with one small alteration, namely the substation of letter "s" for the letter "x". The gTLD <.com> technical extension may be ignored in the circumstances of the present case for the purposes of comparison.
The Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name as it is the owner of the JCDECAUX name and mark and denies any business or other connection with the Respondent or that it has granted any right or licence to the Respondent to use its name and mark in the disputed domain name or otherwise. The burden of production has shifted to the Respondent, who has made any response or attempt to discharged the burden.
In the circumstances described on the balance of probabilities the disputed domain name was chosen and registered for the purpose of typosquatting and has since been passively held, resolving to an inactive website in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **JCDECAUS.COM**: Transferred

PANELLISTS

Name	**Mr James Jude Bridgeman**

DATE OF PANEL DECISION 2019-07-30

Publish the Decision