Decision for dispute CAC-UDRP-102544

Case number	**CAC-UDRP-102544**
Time of filing	**2019-07-12 09:45:28**
Domain names	**learnbabbel.com**

Case administrator

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

Complainant

Organization	**Lesson Nine GmbH**

Respondent

Name	**Boxit Ali**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has submitted evidence, which the Panel accepts, showing that it is the registered owner of the following:
- European Union trademark “BABBEL” (registration n°013641485) dated April 28, 2015.
- European Union trademark “+BABBEL” (registration n°013646179) dated June 5, 2015.
- United States trademark “BABBEL” (registration n°4980763) dated June 21, 2016.
- United States trademark “+BABBEL” (registration n°4980764) dated June 21, 2016.

Moreover, the Complainant uses the domain name bearing “BABBEL” as BABBEL.COM via website <www.babbel.com> for its business.

FACTUAL BACKGROUND

The Complainant is a company specialized in online language learning and it is the global leader of its sector. The Complainant is known in the business as “Babbel” and uses the website www.babbel.com. The Complainant also uses the generic term “learn” on the services offered via mentioned website.

The Complainant holds trademark registrations for “BABBEL” (trademark registration n°013641485 in European Union and trademark registration n°4980763 in United States). The Complainant also holds trademark registrations bearing “+BABBEL” (trademark registration n°013646179 in European Union and trademark registration n°4980764 in United States).

The Respondent registered the disputed domain name <learnbabbel.com>. The disputed domain name is currently active.

On June 21, 2019 the Complainant sent an e-mail to the Respondent about the disputed domain name and requested the transfer of the disputed domain name. However, the Respondent did not reply the Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant is a company specialized in online language learning and is the leading company in its sector.

The Complainant holds trademark registrations for the trademarks “BABBEL” and “+BABBEL” in European Union and United States and also uses the website www.babbel.com.

1. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR TO THE COMPLAINANT’S REGISTERED TRADEMARKS

The disputed domain name is confusingly similar to the Complainant’s registered trademarks “BABBEL” and “+BABBEL” as it includes the Complainant’s “BABBEL” trademark as a whole along with the generic term “LEARN”.

The Complainant alleges that the combination of the “BABBEL” and the generic term ‘‘LEARN’’ is not sufficient to abolish the confusing similarity between the disputed domain name and the Complainant’s trademarks. Furthermore, the generic term “LEARN” word even increase the likelihood of confusion since this term is the Complainant’s marketing tool.

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

The Complainant states that the Respondent has no rights to the disputed domain name as the Respondent has no right, permission or license on the Complainant’s registered trademarks.

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

The Complainant states that the disputed domain name was registered and is being used in bad faith. The Complainant alleges that, the disputed domain name resolves to a website which uses the pirated versions of the Complainant’s software and the Respondent has an intention to attract the users for commercial gain by using the Complainant’s trademarks.

RESPONDENT:

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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and

C. The disputed domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of the BABBEL trademarks.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's "BABBEL" trademarks. The disputed domain name incorporates the Complainant's "BABEL" trademark in its entirety.

Further, the addition of the ‘‘LEARN‘‘ word is not enough to abolish the similarity as it is a generic term. In similar UDRP cases (see, e.g., Sanofi-Aventis v. Gideon Kimbrell, WIPO Case No. D2010-1559; Turkcell Iletisim Hizmetleri A.S. v. Vural Kavak, WIPO Case No. D2010-0010; Greenbrier IA, Inc. v. Moniker Privacy Services/Jim Lyons, WIPO Case No. D2010-0017 and Zodiac Marine & Pool, Avon Inflatables Ltd and Zodiac of North America Inc. v. Mr. Tim Green, WIPO Case No. D2010-0024), the respective UDRP panels found that adding descriptive words does not remove the likelihood of confusion between a trademark and a domain name incorporating said trademark. Therefore adding the "LEARN" word would not remove the confusing similarity.

Moreover, the Panel finds that the addition of the "COM" suffix is irrelevant when determining whether the disputed domain name is confusingly similar to the Complainant's trademarks.

The Panel is of the opinion that the internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademarks. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is open to a Respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

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

(ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has have acquired no trademark or service mark rights; or

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

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the Complainant will have failed to discharge its burden of proof and the Complaint will fail. The burden is on the Complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a prima facie case, then the Respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has nothing to do with the Complaint and any use of the trademark BABBEL has to be authorized by the Complainant and there is no such authorization. Moreover, the disputed domain name has no relation with the Respondent and the Respondent is not commonly known as the disputed domain name. Finally, there is no fair or non-commercial uses of the disputed domain name found as well.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant’s trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. BAD FAITH

The Panel notes that the Complainant must prove that the disputed domain name was registered in bad faith and that it is being used in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances that, if found by a panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent has registered or 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 the respondent's website or other online 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.

By consideration of the foregoing, the Panel is of the opinion that due to the earlier rights of the Complainant on the trademarks “BABBEL” registered worldwide, the Respondent was aware of the Complainant and its globally known “BABBEL” trademark at the time of the registration of the Disputed domain names. (See, e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107; General Electric Company v. CPIC NET and Hussain Syed, WIPO Case No. D2001-0087; Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226). The Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name is to be considered an inference of registration in bad faith.

Considering that the Respondent is conducting business on online language learning sector same as shown in the disputed domain name, the addition of the term “LEARN” to the disputed domain name is descriptive of the Complainant's activity field under the trademarks rather than being distinctive. (See, e.g. Swarovski Aktiengesellschaft v. Frank Jackie, WIPO Case No. D2013-0742).

Therefore, the nature of the generic term used would tend to reinforce consumers' conclusion that the website to which the disputed domain name resolve is somehow linked with the Complainant under its BABBEL trademarks, or otherwise strengthens the risk of association with the Complainant's mark.

Furthermore, by not submitting any response, the Respondent has failed to invoke any circumstances that could demonstrate that it did not register and use the disputed domain name in bad faith.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under 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. **LEARNBABBEL.COM**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2019-08-20

Publish the Decision