Decision for dispute CAC-UDRP-102583

Case number	CAC-UDRP-102583
Time of filing	2019-07-23 09:45:53
Domain names	medaiwan.com

Case administrator

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

Complainant

Organization	MEDIAWAN

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Natasha Irani

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is, inter alia, a registered owner of the following trademark containing a word element "MEDIAWAN":

- MEDIAWAN (figurative), EU Trademark, priority date 23 March 2016, registration date 7 August 2018, trademark application no. 015264203, registered for goods and services in classes 16, 35 and 36; besides other national trademarks consisting of the " MEDIAWAN" denomination.

(collectively referred to as "Complainant's trademarks").

The word element "MEDIAWAN" is also a part of Complainant's registered company name of MEDIAWAN, Société anonyme.

FACTUAL BACKGROUND

The Complainant, MEDIAWAN, Société anonyme, was incorporated in 2015 as a Special Purpose Acquisition Company (SPAC) for the purpose of acquiring one or more operating businesses or companies in the traditional and digital media content and entertainment industries in Europe. Its turnover amounts to 258 million euros.

The disputed domain name <medaiwan.com> was registered on 9 July 2019 and is held by the Respondent.

The domain name website (i.e. website available under internet address containing the disputed domain name) is currently not used and has no content available to public (i.e. the disputed domain name is not currently associated with any active website).

However, the disputed domain name was used for phishing and fraudulent activities since it was used to as a part of an e-mail address dissimulating and imitating an e-mail address of Complainant's billing manager in correspondence with third parties.

The Complainant seeks transfer of the disputed domain name to Complainant.

PARTIES CONTENTIONS

The Parties' contentions are the following:

COMPLAINANT:

CONFUSING SIMILARITY

The Complainant states that:

- The disputed domain name contains “MEDAIWAN” word element, and it is thus almost identical (i.e. confusingly similar) to Complainant’s trademarks.

- Swapping of the letters “A” and “I” in the word MEDIAWAN (i.e. MEDAIWAN vs. MEDIAWAN) is not sufficient to escape confusing similarity between the disputed domain name and Complainant’s trademarks.

- The disputed domain name represents a clear case of so called “typosquatting” which means that the disputed domain name is based on an obvious misspelling of the Complainant’s trademark: MEDAIWAN instead of correct version MEDIAWAN.

- The Complainant refers to previous domain name decisions in this regard.

Thus, according to the Complainant the confusing similarity between Complainant’s trademarks and the disputed domain name is clearly established.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain name.

- The Complainant has not authorized, permitted or licensed the Respondent to use Complainant’s trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by the disputed domain name.

- Furthermore, the domain name website has been during its existence inactive, which implies that there was no Respondent’s intention to use the disputed domain name for legitimate purposes.

- On the contrary, the dispute domain name was used for phishing and fraudulent activities since it was used to as a part of an e-mail address dissimulating and imitating an e-mail address of Complainant's billing manager in a correspondence with third parties.

- The Complainant refers to previous domain name decisions in this regard.

BAD FAITH REGISTRATION AND USE

The Complainant states that:

- Seniority of the Complainant's trademarks predates the disputed domain name registration and such trademarks are well-known in relevant business circles.

- The disputed domain (at the time of filing of the complaint) did not resolve to any active website. In the light of the foregoing, the Complainant asserts that the disputed domain name was registered and used with the sole purpose of selling the disputed domain name to the Complainant or a third party.

- It is well-founded that registration of the disputed domain name that is confusingly similar to the Complainant’s trademarks and Respondent’s engagement in typosquatting, are sufficient to establish bad faith under the 4(a)(iii) of the Policy.

- In addition, the disputed domain name was used for phishing and fraudulent activities since it was used to as a part of an e-mail address dissimulating and imitating an e-mail address of Complainant's billing manager in a correspondence with third parties.

- The Complainant refers to previous domain name decisions in this regard.

The Complainant presents the following evidence which has been assessed by the Panel:

- Information about the Complainant and its business;

- Excerpts from trademark databases;

- Excerpt from WHOIS database regarding disputed domain name;

- Screenshots of relevant websites;

- Copy of e-mail correspondence dissimulating and imitating correspondence from Complainant's billing manager (evidence of Respondent's phishing activities).

RESPONDENT:
The Respondent has not provided any response to the complaint.

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

RIGHTS

Since the disputed domain name and the Complainant's trademarks are not identical, the key element investigated and considered by the Panel is whether the disputed domain name consisting of a term "MEDAIWAN" is confusingly similar to the Complainant's trademarks.

The threshold test for confusing similarity under the UDRP involves a comparison between the trademark and the disputed domain name itself to determine likelihood of Internet user confusion. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. An addition of common, dictionary, generic, or other descriptive terms is typically insufficient to prevent threshold Internet user confusion. Confusing similarity test under the UDRP typically involves a straightforward visual and aural comparison of the trademark with the domain name in question.

The disputed domain name and the Complainant's trademarks are nearly identical since they differ only very insignificantly - a letter A is swapped with a letter I (medAIwan vs. medIAwan), which cannot prevent the association in the eyes of internet consumers between the disputed domain name and the Complainant's trademarks and thus the likelihood of confusion still exists.

For sake of completeness, the Panel asserts that the top-level suffix in the disputed domain name (i.e. the ".com") must be disregarded under the identity and confusing similarity tests as it is a necessary technical requirement of registration.

Therefore, the Panel has decided that there is identity in this case, it also concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

In addition, given the fact that (i) the disputed domain name has not been genuinely used and (ii) in the absence of the Respondent's response, the Panel concludes that there is no indication that the disputed domain name was intended to be used in connection with a bona fide offering of goods or services as required by UDRP.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of Policy).

BAD FAITH

The Panel finds it grounded that the Respondent registered and used the disputed domain name in bad faith.

Namely by using the disputed domain name for purposes of sending fraudulent business correspondence (phishing) to Respondent's business partners the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant, its business and trademarks.

In addition, it is clear that by swapping only two letters in the MEDIAWAN denomination that forms the Complainant trademarks (letter “A” is swapped with a letter “I”) while all other characters of the disputed domain name are identical to the Complainant trademark, it was Respondent’s intention to target Internet users who incorrectly type a website address into their web browser, an illicit activity recognised as „typosquatting“. There are several different reasons for typosquatting, as for example:

- to try to sell the disputed domain name back to the Complainant;
- to monetize the disputed domain through advertising revenues from direct navigation misspellings of the intended domain;
- to redirect the typo-traffic to Complainant’s competitor;
- as a phishing scheme to mimic the Complainant’s site, while intercepting passwords or other information which the visitor enters unsuspectingly;
- to install drive-by malware or revenue generating adware onto the visitors' devices;
- to harvest misaddressed e-mail messages mistakenly sent to the typo domain.

All of the activities above are considered as malicious activities.

For the reasons described above, since (i) there is only a remote chance that the Respondent has registered the disputed domain name just by a chance and without having a knowledge about the existence of the Complainant’s rights and business (ii) there is no real use of the dispute domain name, (iii) the Respondent is engaged in typosquatting, and (iv) the Respondent has used the disputed domain name for fraudulent activities, the Panel contends, on the balance of probabilities, that the disputed domain name has been registered and is being used by the Respondent in bad faith.

Thus, the Panel has taken a view that 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).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MEDAIWAN.COM**: Transferred

PANELLISTS

Name	**JUDr. Jiří Čermák**

DATE OF PANEL DECISION 2019-09-05

Publish the Decision