Decision for dispute CAC-UDRP-102599

Case number	**CAC-UDRP-102599**
Time of filing	**2019-07-29 09:21:44**
Domain names	**eurizon-capital.com**

Case administrator

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

Complainant

Organization	**Intesa Sanpaolo S.p.A.**

Complainant representative

Organization	**Perani Pozzi Associati**

Respondent

Name	**Xavier Dylan**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

- EU trademark registration n. 5283460 “EURIZON CAPITAL”, applied on August 8, 2006, granted on June 21, 2007 for various financial services in class 36;

- Hong Kong trademark registration n. 303480066 “EURIZON CAPITAL”, applied on July 22, 2015, granted on March 1, 2016 for various financial services in class 36.

FACTUAL BACKGROUND

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

The Complainant is the leading Italian banking group and also one of the protagonists in the European financial arena. Intesa Sanpaolo is the company resulting from the merger (effective as of January 1, 2007) between Banca Intesa S.p.A. and Sanpaolo IMI S.p.A., two of the top Italian banking groups.

Intesa Sanpaolo is among the top banking groups in the euro zone, with a market capitalisation exceeding 33,0 billion euro,

and the leader in Italy, in many business areas (retail, corporate and wealth management). Thanks to a network of approximately 4,100 branches capillary and well distributed throughout the country, with market shares of more than 16 % in most Italian regions, the Group offers its services to approximately 11,8 million customers. Intesa Sanpaolo has a strong presence in Central-Eastern Europe with a network of approximately 1.100 branches and over 7,3 million customers. Moreover, the international network specialised in supporting corporate customers is present in 25 countries, in particular in the Mediterranean area and those areas where Italian companies are most active, such as the United States, Russia, China and India.

Eurizon Capital SGR is the asset management company of the Intesa Sanpaolo Group, specialising in products for retail and institutional customers. This company manages assets of around 255,4 billion euros, and controls a market share of 15,3 %, making it one of the largest Italian asset managers. Another member of the Group is Eurizon Capital SA. It is an asset management company established in 1988 in the Grand Duchy of Luxembourg and it is fully owned by Eurizon Capital SGR. Eurizon Capital SA manages and distributes Luxembourg based collective investment funds for retail and institutional clients. In Luxembourg, the company offers a broad range of services dedicated to institutional investors, including the possibility of setting up customized collective investment funds.

The Complainant is the owner, among others, of registrations for the trademark “EURIZON CAPITAL” in various jurisdictions. This includes the EU and Hong Kong trademark registrations referred to above.

The Complainant is also the owner of domain names consisting of the prefix <EURIZONCAPITAL> followed by the following gTLDs and ccTLDs: .COM, .IT, .CN, .COM.CN, .RU, .ES, .COM.PT, .NL, .CH, .DE, .CO.UK, .FR, .RO, .RS, .TW, .JP, .IN, .ASIA, .COM.BR, .PE, .SK, .HU, .HK and .SI.

As an aside, the Complainant asserted that a search for the term "EURIZON CAPITAL" in Google Inc's search engine yields obvious references to the Complainant and it attached a search extract in support of this assertion.

On March 10, 2019 the Respondent registered the disputed domain name <EURIZON-CAPITAL.COM>.

The disputed domain name diverts users to a parking page that contains links but no meaningful content.

The Respondent listed his address as being in Hong Kong.

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).

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

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Paragraph (4)(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

1) the disputed domain name is identical or confusingly similar to a trademark or service mark ("mark") in which the Complainant has rights; and

2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

3) the disputed domain name has been registered and is being used in bad faith.

The Panel is satisfied that the Complainant has satisfied all three elements for the principal reasons set out below.

RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

As mentioned above the Complainant asserts it has a number of trademark registrations consisting of the words EURIZON CAPITAL. At least one of these registrations predates the registration date of the disputed domain name by over a decade. Another one is in the Respondent's home jurisdiction of Hong Kong.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a trademark that predates the registration of the disputed domain name in a single jurisdiction (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijke KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO May 7, 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436). The Complainant has clearly satisfied such in relation to the trademark EURIZON CAPITAL.

The next question is whether the disputed domain name is confusingly similar to the EURIZON CAPITAL trademark.

The Panel disregards the gTLD suffix ".com" for the purpose of this comparison. It is of no brand significance and it is likely to be totally ignored by web users. Such web users are likely to focus entirely on the only distinctive element in the disputed domain name, being the EURIZON-CAPITAL element.

This EURIZON-CAPITAL element differs only from the EURIZON CAPITAL trademark by way of the substitution of a hyphen in place of a space. Not only is a single hyphen relatively insignificant in this comparison but it is a symbol commonly used in lieu of a space in separating words, at least in the English language. Hence there is a very high degree of similarity between EURIZON-CAPITAL and EURIZON CAPITAL.

The disputed domain name is therefore confusingly similar to the EURIZON CAPITAL trademark.

NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent's name according to information provided by the registrar for the disputed domain name is "Xavier Dylan". This name bears no resemblance to "EURIZON CAPITAL". Further, the website to which the disputed domain name resolves has no content which would indicate any right or legitimate interest in the disputed domain name.

The Respondent has no rights or interests in the disputed domain name.

BAD FAITH

The Panel notes that the disputed domain name redirects web users to a parking page without any meaningful content. The Panel also notes that the disputed domain name has been registered for a short period of time. Such facts alone do not indicate bad faith. This is not a case of prolonged passive holding. It is not, in the Panel's opinion, indicative of bad faith for a domain name registrant to fail to immediately direct the disputed domain name to an active page within a few months of registration. Website development can take time and it is foreseeable that some traders may direct a domain name to a parking page whilst they legitimately pursue such development.

However the apparent passive holding of the disputed domain name is not what is of central concern to the Panel on the issue of bad faith. What is of concern is that;

(a). According to the Complainant's uncontested contentions EURIZON CAPITAL is distinctive and well known; and

(b). The only distinctive element in the disputed domain name is EURIZON-CAPITAL; and

(c). The Complainant has evidenced long standing registered rights in trade marks consisting of EURIZON CAPITAL coupled with uncontested contentions of the size of the Complainant's business under its EURIZON CAPITAL trade mark and its prominence in a Google search.

These combined facts have led the Panel to the conclusion that it is highly unlikely that the Respondent would not have known of such a unique trade mark when he sort to register the disputed domain name.

As the Panel has found the Respondent had such prior knowledge of the EURIZON CAPITAL trade mark at the time of registering the disputed domain name it can only follow that his purpose in registering the disputed domain name was to opportunistically profit from such confusing similarity. The Respondent targeted the Complainant's well known name for this purpose. Such opportunism has been recognised as bad faith by numerous panels, the Panel refers to the commentary of the learned Gerald M Levine, Domain Name Arbitration, Legal Corner Press, 1st ed. 2015, pp. 258 to 259.

Therefore in consideration of all the circumstances the disputed domain name has been registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **EURIZON-CAPITAL.COM**: Transferred

PANELLISTS

Name	**Mr Andrew Norman Sykes**

DATE OF PANEL DECISION 2019-09-09

Publish the Decision