Decision for dispute CAC-UDRP-102667

Case number	CAC-UDRP-102667
Time of filing	2019-09-05 09:56:32
Domain names	cmcmarkets.vip

Case administrator

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

Complainant

Organization	CMC Markets UK Plc

Complainant representative

Organization	Waterfront Solicitors LLP

Respondent

Organization	Cheng du bai guo rui zhang shi gong cheng you xian gong si

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

The Complainant is the holder of the following trademark registrations of the sign “CMC Markets” (the " CMC MARKETS trademark"):

- the European Union trademark CMC MARKETS with registration No. 003940954, registered on 20 April 2012 for goods and services in International Classes 9, 35, 36 and 41; and

- the International trademark CMC MARKETS with registration No. 1061980, registered on 4 November 2010 for goods and services in International Classes 9, 36 and 41.

FACTUAL BACKGROUND

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

The Complainant is a financial services company that is authorised and regulated by the Financial Conduct Authority (the “FCA”) in the UK. The Complainant appears on the FCA’s Register with registration number 173730. The Complainant’s

group is one of the world's leading online contracts for difference and financial spread betting providers with over 66 million trades executed annually. The Complainant has offices in Europe, Asia, Australasia and the Americas and a worldwide client base. The Complainant's profit after tax for the financial year ending 31 March 2019 was in excess of GBP 5.9 million.

The Complainant uses the domain name <cmcmarkets.com> for its online activities and as part of e-mail addresses used in its business.

The disputed domain name was registered on 26 March 2019. It resolves to a website that reproduces the design and services of the Complainant's website located at www.cmcmarkets.com, and includes the CMC MARKETS trademark, a similar choice of color schemes, icons and banners, as well as images of the Complainant's Next Generation trading platform and the texts "LSE Listed on the London Stock Exchange (LSE)", "Est. 1989, 30 years of experience", and "CMC Markets Asia Pacific Pty Ltd ABN 11 100 058 213, AFSL No. 238054 (Derivative Product Issuer)", which is the name of a company belonging to the Complainant's group.

The Complainant further submits that the Respondent's website offers an account service with the option for users to make account deposits, and the Complainant has received a number of complaints from individuals who thought they were dealing with the Complainant when using the Respondent's website and who have made payments to the Respondent under this belief.

The Complainant states that on 2 April 2019 it wrote to the Respondent, requesting that the Respondent's website be taken down immediately, which the Respondent has not done.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

According to the Complainant, the disputed domain name is identical to the CMC MARKETS trademark, which it reproduces entirely.

The Complainant submits that the Respondent has no rights or interests in the disputed domain name, which is highly similar to the CMC MARKETS trademark and to the Complainant's <cmcmarkets.com> domain name. According to the Complainant, the Respondent has knowingly and intentionally sought to confuse customers of the Complainant and to impersonate the Complainant's financial business, without being associated with the Complainant and without having permission to use the CMC MARKETS trademark.

The Complainant contends that the Respondent has registered and used the disputed domain name in bad faith to fraudulently impersonate the Complainant for the purpose of causing harm and disruption to the Complainant's business and in the hope that it would receive payments by the Complainant's customers.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions and did not submit any arguments or evidence in its defense.

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.

In respect of the language of the proceeding, the Panel notes the following. According to the information provided by the Registrar, the language of the registration agreement for the disputed domain name is Chinese. Under paragraph 11 of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant has submitted its Complaint in the English language, and requested the proceeding to be held in English. In support of its request, the Complainant pointed out that the Respondent's impersonation of the Complainant indicates that the Respondent communicates in English. This is supported by the fact that the disputed domain name contains English words, while the Respondent's website can be viewed in English and in Chinese and its basic language is English.

The Respondent has not expressed its views on the language of the proceeding and has thus not objected to the Complainant's request that the proceedings be held in English.

Taking all the above circumstances into account, the Panel accepts that the Respondent would not be disadvantaged if the language of the proceeding is English, and is satisfied that using the English language in this proceeding would be fair and efficient.

Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English.

PRINCIPAL REASONS FOR THE DECISION

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name …"

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the CMC MARKETS trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the ".vip" gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence "cmcmarkets". It consists of the elements "cmc" and "markets", and their combination is identical to the CMC MARKETS trademark. In view of this, it is likely that Internet users may regard the disputed domain name as referring to an official website of the Complainant. The likelihood of such confusion is increased by the fact that the relevant part of the disputed domain name is also identical to the relevant part of the domain name <cmcmarkets.com> where the official website of the Complainant is located.

In view of the above, the Panel finds that the disputed domain name is identical to the CMC MARKETS trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because the Respondent has intentionally impersonated the Complainant's financial business, without being associated with the Complainant and without having permission to use the CMC MARKETS trademark. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not alleged that is has rights and legitimate interests in the disputed domain name and has not disputed the Complainant's allegations in this proceeding.

As discussed above, the disputed domain name is identical to the CMC MARKETS trademark and to the relevant part of the Complainant's domain name for its official website. It is not denied by the Respondent that the disputed domain name resolves to a website that reproduces many elements of the official website of the Complainant. In view of this, Internet users may regard the Respondent's website as the official website of the Complainant. As contended by the Complainant, the Respondent's website offers interested parties to open accounts with the Respondent, which may lead to a situation where they transfer funds to the Respondent in the mistaken belief that they are making these transfers to the Complainant.

In the lack of any denial by the Respondent of the Complainant' contentions, the above combination of circumstances leads the Panel to conclude that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant's CMC MARKETS trademark, has registered and used the disputed domain name in an attempt to exploit this trademark's goodwill to attract Internet users to the Respondent's website and to confuse them and thus obtain financial gain. Such activity is not legitimate.

In view of the above, the Panel finds that the evidence in the case supports the prima facie case made by the Complainant, and finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

As discussed above, the disputed domain name is identical to the CMC MARKETS trademark and to the relevant part of the Complainant's domain name for its official website. The disputed domain name resolves to a website that mimics the official website of the Complainant without containing any disclaimer. It appears that the Respondent attempts to illegitimately impersonate the Complainant. As a result, Internet users may regard the Respondent's website as the official website of the Complainant. As contended by the Complainant, the Respondent's website offers interested parties to open accounts with the Respondent, which may lead to a situation where they transfer funds to the Respondent in the mistaken belief that they are making these transfers to the Complainant.

Taking all this into account, the Panel accepts that as more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the CMC MARKETS trademark in an attempt for commercial gain to attract traffic to the disputed domain name by confusing Internet users that they are reaching an official online location of the Complainant. This satisfies the Panel that the Complainant has established that the Respondent has registered and used the disputed domain name in bad faith under Paragraph 4(b) (iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CMCMARKETS.VIP**: Transferred

PANELLISTS

Name	**Assen Alexiev**

DATE OF PANEL DECISION 2019-10-17

Publish the Decision