# Decision for dispute CAC-UDRP-102728

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| Case number | CAC-UDRP-102728 |
| Time of filing | 2019-10-21 13:30:12 |
| Domain names | intrum-it.com |

## Case administrator

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

## Complainant

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| Organization | Intrum Licensing AG |

## Complainant representative

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| Organization | BRANDIT GmbH |

## Respondent

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| Name | Zhong Li Luo |

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 the registrant of the international trademark registration No. 1430717, “INTRUM”, registered on June 12, 2018, for goods and services in classes 9, 35, 36, 41, 42, 45.

The disputed domain name was registered by the Respondent on June 28, 2019.

FACTUAL BACKGROUND

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

The Complainant appears to be a part of one of the leading European credit management services companies. The first company of the group was founded in 1923 in Stockholm.

The Complainant points out that it is the owner of the international trademarks "INTRUM" and "INTRUM JUSTITIA", registered before the registration of the disputed domain name.

The Complainant submits that it owns a number of domain names containing the term "INTRUM", including the domain

name <intrum.com> registered since April 9, 1996, and <intrum.group> registered since May 31, 2016. The Complainant clarifies that it uses these domain names through a website for informing potential customers about its products and services.

The Complainant observes that the disputed domain name incorporates entirely the Complainant's trademark "INTRUM", followed by a hyphen and by the suffix "IT", which could be understood as the abbreviation of "Italy". The Complainant adds that it is also actively present in Italy.

The Complainant underlines that the top-level domain ".COM" does not add any distinctiveness to the disputed domain name.

The Complainant considers that the disputed domain name is confusingly similar to its trademark "INTRUM".

The Complainant states that it never granted the Respondent any right to use its trademark within the disputed domain name.

The Complainant adds that the Respondent is not affiliated to the Complainant in any form.

The Complainant argues that the Respondent is not commonly known by the disputed domain name.

The Complainant notes that when entering the term "INTRUM" in the search engines Google and Baidu, the majority of the results point to webpages about the Complainant.

The Complainant contends that, before registering the disputed domain name, the Respondent could have performed a similar search and would have discovered that the word "INTRUM" corresponds to the Complainant's trademark, that is also used in China.

The Complainant submits that it became aware that the Respondent was using the disputed domain name through a website promoting an app for adult content.

The Complainant asserts that it requested the hosting provider, through an abuse report, to suspend the disputed domain name and that the hosting provider accepted the request.

The Complainant argues that the Respondent has not shown that the disputed domain name will be used in connection with a bona fide offering of goods or services.

The Complainant considers that the Respondent has the intention of taking advantage of the distinctiveness of the trademark "INTRUM" and that the Respondent has no right nor legitimate interest in respect of the disputed domain name.

The Complainant highlights that the Complainant's trademark predates the registration of the disputed domain name and that the Respondent has never been authorized by the Complainant to register the disputed domain name.

The Complainant notes that the term "INTRUM" is a made-up word that refers only to the Complainant and that is not contained in the English dictionary nor in the Chinese dictionary.

The Complainant points out that the Respondent has failed in presenting a credible evidence-based reason for registering the disputed domain name.

The Complainant contends that for the above reasons the disputed domain name has been registered in bad faith.

The Complainant recalls that the Respondent was using the disputed domain name through a website that promoted an app for adult content and notes that other panels found similar facts as evidence of bad faith.

The Complainant states that it sent to the Respondent a cease-and-desist letter, but it did not receive any response.

The Complainant adds that the use of a privacy shield to conceal his or her identity is also an evidence of bad faith.

The Complainant considers that for these reasons the disputed domain name is being used in bad faith.

## 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.

In particular, the Panel accepts the complaint in English. Indeed, under paragraph 11(a) of the Rules for Uniform Domain Name Dispute Resolution Policy, "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".

In the present case, the language of the Registration Agreement is English. The Panel, in the absence of any other agreement between the Parties or any specific provision in the Registration Agreement, and taken into account that the disputed domain name and the app promoted by the website related to disputed domain name are in Latin characters, considers that it is appropriate that the language of the proceeding and the decision be English.

## PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

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

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

(iii) The disputed domain name has been registered and is being used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "INTRUM", identified in section "Identification of rights" above.

The Panel observes that the registration of the Complainant's trademark predates the registration of the disputed domain name.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant's trademark.

The disputed domain name differs from the Complainant's trademark "INTRUM" only by the addition of the hyphen, of the term "IT" after the hyphen, and of the top-level domain ".COM".

It is well accepted that the hyphen is not relevant in the confusing similarity test (see, for example, WIPO case No. D2016-0676).

It is a common view that where a trademark is the distinctive part of a domain name, the domain name is considered to be confusingly similar to the trademark (see, for example, WIPO case No. D2017-1266).

In the present case the term "IT" (which could be considered as the abbreviation of the geographical term "Italian Republic" under ISO 3166-1 alpha-2 code and the corresponding country code top-level domain name), after the hyphen has no impact on the distinctive part "INTRUM". It is well established that, where the relevant trademark is recognizable within the domain name, the addition of geographical terms would not be sufficient to prevent a finding of confusing similarity (see, for example, WIPO case No. D2014-0710).

It is also well established that the top-level domain, in this case ".COM", may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

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

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”.

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- it never granted the Respondent any right to use its trademark within the disputed domain name;

- the Respondent is not affiliated to the Complainant in any form;

- the Respondent is not commonly known by the disputed domain name;

- when entering the term "INTRUM" in the search engines Google and Baidu, the majority of the results point to webpages about the Complainant;

- the disputed domain name was used for promoting an app for adult content and at the time of filing the complaint did not resolve to any website.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Indeed, the website in relation with the disputed domain name consisted in a website promoting an app for adult content and following an abuse report the disputed domain name was suspended.

The Panel considers that, on the balance of probability, the Respondent knew of the rights that the Complainant had established in the term "INTRUM", which is a made-up word, and registered the disputed domain name with knowledge of the Complainant's rights. Indeed, it is not conceivable that the Respondent did not have the Complainant's trademark “INTRUM” in mind, when registering and using the disputed domain name. Under these circumstances, it cannot be concluded that the Respondent is making a "fair" use of the disputed domain name.

Taking into account that the Respondent is not commonly known as the disputed domain name, that the Complainant has never granted the Respondent any right to use its trademark within the disputed domain name, that the Respondent is not affiliated to the Complainant in any form, that the disputed domain name does not resolve to any website and that it was used for promoting an app for adult content, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.fUnder the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

REGISTERED AND USED IN BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] 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 [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

As the Complainant has pointed out, the Respondent must have been aware of the Complainant's rights in the "INTRUM" trademark and the relating domain name. A simple search on the most common search engines would have revealed that the fantasy term "INTRUM" coincides with the Complainant's trademark "INTRUM".

Therefore, the Panel considers that it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark “INTRUM” when registering the disputed domain name. Other panels considered that knowledge of a corresponding mark at the time of the domain name’s registration can suggest bad faith (see, for example, WIPO Case No. D2017-0100) and the Panel shares this view.

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain name it would have replied to the cease-and-desist letter and would have filed a Response in this proceeding.

The Panel notes that the Respondent's use of the disputed domain name promoting an app for adult content was very likely to result in tarnishing the trademark and the Complainant. Other panels have considered that such use may constitute evidence of bad faith (see, for example, WIPO Case No. D2017-2338).

As regards the fact that at the time of filing the complaint the disputed domain name did not resolve to any website, the Panel observes that other panels considered that this fact would not prevent a finding of bad faith under the doctrine of passive holding (see, for example, WIPO Case No. D2019-2192). The Panel agrees with this view.

The Panel agrees with the Complainant's argument that the Respondent's use of a privacy service for concealing his or her identity could be considered as an evidence of bad faith (see, for example, WIPO Case No. D2019-2192).

The Panel, having taken into account the Respondent's presumed knowledge of the "INTRUM" trademark at the time of the disputed domain name's registration, that no reply was sent to the cease-and-desist letter, that no response to the complaint has been filed, that a privacy service for concealing the Respondent's identity was used and that the disputed domain name was used for promoting an app for adult content, that the disputed domain name is passively hold, considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of 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. **INTRUM-IT.COM**: Transferred

## PANELLISTS

| Name | **Michele Antonini** |
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DATE OF PANEL DECISION 2019-11-30

Publish the Decision