Decision for dispute CAC-UDRP-102837

Case number	CAC-UDRP-102837
Time of filing	2020-01-08 08:42:48
Domain names	aero-vodochody.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	AERO Vodochody AEROSPACE a.s.

Complainant representative

Organization	Law office Cech Hromek Pleskac, LLC

Respondent

Name	Jiri Dvorak

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of registered EU trademark no. 11418027 “AERO VODOCHODY” and no. 11347457 “AERO VODOCHODY AEROSPACE”, which covers both registered since 2012.

The Complainant is further the owner of several Czech trademarks that contains the term “AERO” – trademark O-16779 registered since1930, trademark O-35901 registered since1965 and trademark O-154437 registered since 2000.

The full business name of the complainant contains term “AERO VODOCHODY” because spelt as “AERO Vodochody AEROSPACE a.s.“ whereas the term “VODOCHODY” is the name of the place where the factory of the Complaint is located.

The disputed domain name was registered in April 2019.

FACTUAL BACKGROUND

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

The Complainant is based in the Czech Republic and it is historically the largest producer of military jet trainers in the world

with more than 11,000 aircrafts produced totally and over 13,000,000 flight hours' total log of the fleet. The Complainant cooperates with major global aircraft manufacturers on commercial and military programs.

The Complainant uses and operates the official website "www.aero.cz". The Respondent uses and operates the false website "www.aero-vodochody.com". This website contained illegal content. Now the website is inactive.

The disputed domain name "aero-vodochody.com", according to the Complainant, is identical to its EU trademark no. 11418027 "AERO Vodochody" dating as early as 2012.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

COMPLAINANT:

I. Disputed domain name is a confusingly similar to the protected mark and geographical term

The disputed domain name <aero-vodochody.com>, according to the Complainant, is identical to its EU trademark no. 11418027 <AERO Vodochody> dating as early as 2012. Furthermore, the disputed domain name "aero-vodochody.com" is confusingly similar to other Complainant´s trademarks listed above. All these other Complainant´s trademarks listed above contain the term <aero> and <Vodochody> and they are clearly recognizable in the disputed domain name. The most distinctive part of the disputed domain name <aero-vodochody.com> is <aero>, which is identical.
It is the view of the Complainant that the most distinctive element of the Complainant's trademarks is the term "aero", which is exactly replicated in the disputed domain name <aero-vodochody.com>. The Complainant joins the view of the Panel in Banque Delubac et Cie v. Mickael Zeitoun, Milscorp, WIPO Case No. D2018-2705, that the most distinctive element of the trademarks is the term "DELUBAC"" (see also Banque Delubac et Cie v. Pierre Dieudonne, WIPO Case No. DEU2018-0030).
The addition of the dash and of the term "vodochody" /referring to a place in the Czech Republic where the factory of the Complainant is located/ does not avoid the confusing similarity between the disputed domain name and Complainant's trademarks: in fact, AERO is recognizable in the disputed domain name. On this regard the Complainant shares the view mentioned in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 1.7 that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.
When a domain name wholly incorporates a complainant's registered trademark, it is sufficient to establish identity or confusing similarity for the purposes of the Policy. See Oki Data Americas, Inc. v. ASD, Inc, WIPO Case No. D2001-0902.

The top-level suffix '.com' is also generally irrelevant when assessing whether a domain name is identical or confusingly similar to a trademark. This is because gTLDs are only required for functionality of a website. See Proactiva Medio Ambiente, S.A. v. Proactiva, WIPO Case No. D 2012-0182.

Additionally, the other distinctive part of the disputed domain name <aero-vodochody.com> is <vodochody>, which is again identical to or confusingly similar term to the Complainant´s trademark which contains the same term <vodochody> and the Company/Trade name of the Complainant, which contains the same term <vodochody> as well as the term <aero> while the term <vodochody> refers originally to the location of the main factory
and production plant of the Complainant which is still in full operation.

Finally, the disputed domain name <aero-vodochody.com> would likely mislead and direct customers or businesses away from the Complainant's legitimate websites www.aero.cz.

II.The Respondent does not have any rights or legitimate interest in the disputed domain name

The Respondent is not affiliated with nor authorized by the Complainant in any way, and it is not related in any way to the Complainant's business.

The Complainant asserts that the disputed domain name <aero-vodochody.com> is used and misused by the Respondent, Mr. Jiří Dvořák, a former employee of the Complainant, to the detriment of the Complainant.

The Respondent - Mr. Jiří Dvořák - apparently is an author of the articles formerly published on the web site www.aero-vodochody.com, however he tried to conceal his identity as a disputed domain holder from the public using the services of an organisation called Whoisprotection.cc. The Registrant's - i.e. Mr. Dvorak´s - genuine identity and contact details have been shielded by a privacy protection service apparently provided by Whoisprotection.cc.

The Complainant asserts that the use of a privacy protection service when registering the disputed domain name is evidence of the Registrant's bad faith. The Complainant states that the concealment of the Registrant´s and/or Respondent's identity was intended to 'make it difficult for a brand owner to protect its trademarks against infringement, dilution and cybersquatting'. See Oculus VR, LLC v. PrivacyGuardian.org / Vildan Erdogan, WIPO Case No. D2018-0464).

Finally, the Complainant asserts and emphasizes that the Respondent has in a recent case been found to be in violation of the UDRP Policy, similar to the present Complaint, in support of their bad faith assertion against the Respondent.

The Complainant refers to the CAC case no. 102597 which was resolved by the Czech Arbitration Court in favor of the Complainant and the disputed domain name <aero-vodochody.net> was to be transferred to the Complainant.

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

The web site www.aero-vodochody.com operated under the disputed domain name <aero-vodochody.com> apparently looked like and pretended to be an official web site of the Compainant and it was full of malicious content. It is the view of the Complainant that the Respondent has intentionally registered the disputed domain name which replicates the most distinctive elements of the Complainant's trademarks: "aero" and "vodochody".
The disputed domain name <aero-vodochody.com> was used for publishing untrue, false, defamatory and libellous articles about the Complainant, its business, products, board members, employees etc., which is illegal and could be detrimental to the good reputation of the Complainant.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that (i) only the Complainant is allowed to use its trademarks and Company/Trade name; (ii) the Respondent allows and enables use of the disputed domain name to publish illegal content and this could tarnish the Complainant's trademarks, company/trade name and image. This situation is also capable to damage the Complainant's good reputation.

Furthermore, the Complainant asserts that the Respondent chose the disputed domain name so as to create a likelihood of confusion with the Complainant's trademarks and with the Complainant's official web site www.aero.cz and ultimately to confuse the Complainant's clientele and customers into believing that there would be some sort of affiliation between the disputed domain name and the Complainant, solely for the Respondent's commercial gain and other unfair purposes.

As to the use of the disputed domain name in bad faith it is worthwhile to note that the Respondent created and operated the web site in such a manner which is identical and similar to the Complainant's official web site www.aero.cz including, but not limited to, its graphic design, which is illegal. Such use cannot be
considered a bona fide use and is detrimental to the Complainant's trademarks, image and good reputation.

Finally, the Complainant refers to the final judgment rendered by the Czech criminal court according to which the Respondent - Mr. Jiří Dvořák - a genuine Registrant of the disputed domain - was convicted as an offender of various criminal attacks against the Complainant´s employees with respect to their working activities for the Complainant. The criminal endeavor of Mr. Jiří Dvořák were aimed at the Complainant and a good reputation of its employees and included criminal defamation and blackmailing. In this regard the criminal attacks conducted by the Respondent - Mr. Jiří Dvořák - were continuing /in spite of the criminal judgment rendered by Czech penal court and from the Complainant´s perspective they meant unwelcome events of serious misconduct.

It is duly established that the disputed domain name was misused to the detriment of the Complainant and webpages www.aero-vodochody.com which were actively operated under the disputed domain name obviously served as a vehicle and place to commit criminal activities. The Respondent is fully liable for such wrongful activities irrespective of the fact that he tried to hide his identity as a domain holder.

It is clearly established that the Respondent operated the respective webpages www.aero-vodochody.com under the disputed domain name.

The Complainant therefore suggests that the Panel should take into consideration that the Respondent was not making any legitimate noncommercial or fair use of the disputed domain name.

Webpages www.aero-vodochody.com were clearly operated with dishonest intent - to tarnish the Complainant´s trademarks and services and to damage its good reputation.

Such use can neither be considered as bona fide offering of goods or services nor a legitimate noncommercial 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; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 2.13: "Panels have categorically held that the use of a domain name for illegal activity ... can never confer rights or legitimate interests on a respondent".

The Complainant repeatedly refers to the case no. 102597 with respect to the domain name aero-vodochody.net which was recently resolved by the Czech Arbitration Court. The Panel came to a clear and final conclusion that "even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark. Therefore, the registration of the disputed domain name which is identical to one of the Complainant's trademark, could not be accepted, even if the disputed domain names would be fairly used for the purposes of the criticism. Moreover, the Panel is of the opinion, that the disputed domain name has not been used by the Respondent for the purposes of genuine and noncommercial criticism. It is evidenced by the judgements issued by the Czech criminal courts against the Respondent, that the Respondent was convicted as an offender of various criminal attacks against the Complainant´s employees with respect to their working activities for the Complainant and that the Respondent's activities were aimed at the Complainant and a good reputation of the Complainant and its employees. The disputed domain name obviously serves as a vehicle and place to commit such criminal activities by the Respondent."

The Respondent has registered the domain name with no intention to use it for its legitimate entrepreneurial activity, but only for illegal purposes - unjustified criminal attacks towards the Complainant, its managers and employees.

The disputed domain name is likely to cause confusion amongst Internet users given the nature and wide use of the Complainant's trademarks in the classes of goods or services in which they are registered.

The Complainant believes that it has made out a strong prima facie case that the Respondent could have no rights or legitimate interests in respect of the disputed domain name.

The Respondent has used the disputed domain name not in connection with a bona fide offering of goods or services.

The Complainant further contends that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name and is not commonly known under the disputed domain name.

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

1. In order to succeed the claim, the Complainant has to prove that all of the elements embedded in paragraph 4(a) of the Policy have been satisfied:

(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 with respect to the disputed domain name; and

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

2. The Panel reviewed carefully the Complaint and the evidence provided by the Complainant. The Respondent filed neither administratively compliant Response nor provided the Panel with any evidence. The Panel based its finding and the Decision on the evidence presented by the Complainant and available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The Complainant has proved that it is a long standing in the Czech Republic and historically the largest producer of military jet trainers in the world. Its seat in in the Czech town Vodochody.

It was established that the Complainant is the owner of registered EU trademark no. 11418027 “AERO VODOCHODY” which covers classes of products and services as follows 6) Boarding stairs and ladders for aircraft; (7) Loading equipment, devices and apparatus; (9) Aeronautical communications apparatus; On-board computers; Ground facilities for flight training, such as simulators; (11) Ventilation (air-conditioning) installations for aircraft; (12) Aircraft and fittings therefor, in particular wings, ailerons, spoilers, doors, cowlings and casings, cabins, propellers, power drive units, steering and pedal controls, systems for controlling flaps, trimming, transmission; Hydraulic systems for aircraft, undercarriages; Aerospace apparatus; De-icing and oxygen systems for aircraft, mooring and covering equipment for aircraft; (41) Education; Providing of training; Training of pilots and ground personnel; (42) Scientific and technological services and research, development and design relating thereto; Industrial analysis and research services. and no. 11347457 “AERO VODOCHODY AEROSPACE”, which covers the same categories of products and services and that both trademarks have been registered also since 2012. Therefore, it is undisputable that the trademarks and domain names of the Complainant contain the terms “AERO” and "VODOCHODY".

It was established that the Complainant is still the owner of the several Czech trademarks that contains the term “AERO” among others trademark O-16779 registered on 17 January 1930, trademark O-35901 registered on 27 December1966, trademark O-16779 registered on 28 March 2001 and trademark O-154437 registered on 28 March 2007.

4. The Panel therefore came to the conclusions as follows:

A. THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name "aero-vodochody.com" was registered on 16 April 2019 (8:51:03) as the Registrar Verification WHOIS shows.

The Panel finds that the disputed domain name "aero-vodochody.com" was created by a combination of the trademark name "AERO" and a geographical denomination Vodochody referring to a place in the Czech Republic where the factory of the Complainant is located and seated.

The Panel finds that the disputed domain name "aero-vodochody.com", is identical / confusingly similar to the EU trademarks no. 11418027 "AERO Vodochody" and No. 11347457 “AERO VODOCHODY AEROSPACE” dating since 2012 and that the disputed domain name "aero-vodochody.com" is confusingly similar to other Complainant´s Czech trademarks O-16779 registered on 17 January 1930, trademark O-35901 registered on 27 December1966, trademark O-16779 registered on 28 March 2001 and trademark O-154437 registered on 28 March 2007.

All these Complainant´s trademarks contain the term "AERO" and "VODOCHODY" and they are clearly recognizable in the disputed domain name. The most distinctive part of the disputed domain name "aero-vodochody.com" is "AERO", which is identical with the term “AERO” included in the disputed domain name "aero-vodochody.com". The addition of the dash between the term "AERO" and the term “VODOCHODY” does not avoid the identity between the disputed domain name and Complainant’s trademarks when "AERO" is included in the disputed domain name.

Additionally, the other distinctive part of the disputed domain name "aero-vodochody.com" is the term "VODOCHODY" which is identical to the term of the Complainant´s trademark which contains the same term and the Company/Trade name of the Complainant, which contains the same term "VODOCHODY" as well as the term "AERO" while the term "VODOCHODY" refers originally to the location of the main factory and production plant of the Complainant which is still in full operation.

Finally, the disputed domain name "aero-vodochody.com" would likely mislead and direct customers or businesses away from the Complainant’s legitimate websites "www.aero.cz".

The Panel finds further that the gTLD .website does not create any distinctiveness to the disputed domain name because the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to Complainant’s trademark and does not prevent the likelihood of confusion between the disputed domain name and Complainant, its trademark and its domain names. The top-level suffix ‘.com’ is generally irrelevant when assessing whether a domain name is identical to a trademark. This is because gTLDs are only required for functionality of a website. See the CAC Case No. 102597, AERO-VODOCHODY.NET and Proactiva Medio Ambiente, S.A. v. Proactiva, WIPO Case No. D 2012-0182.

The Panel therefore considers the disputed domain name to be identical to Complainant’s EU trademark “AERO VODOCHODY” and confusingly similar to the Complainant’s Czech trademarks “AERO” and Complainant’s EU trademark “AERO VODOCHODY AEROSPACE” in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAME

The Panel finds that Complainant has never granted the Respondent any right into the disputed domain name. The Respondent was not found that it is commonly known by the disputed domain name and has got interest over the disputed domain name or the major part of it. When entering the terms “AERO” and "VODOCHODY" in the Google search engine, the returned results pointed to the Complainant’s business activities only.

The Respondent could have easily performed a similar search before registering the disputed domain name and would have quickly learnt that the trademarks are owned by the Complainant and that the Complainant has been using its trademarks worldwide whereby it is obvious that the Respondent as a former employee of the Complainant was very well aware of the protected trademarks owned by the Complainant. The Respondent has not by virtue of the content of the website, nor by its use of the disputed domain name shown that they will be used in connection with a bona fide offering of goods or services.

The Respondent is not affiliated with nor authorized by the Complainant in any way, and it is not related in any way to the Complainant's business. The Respondent has not prove any others.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii)of the Policy).

C. THE DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

i. THE DOMAIN NAME WAS REGISTERED IN BAD FAITH

The Complainant's trademark rights pre-date the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to use these trademarks nor to register the disputed domain name. It is inconceivable that using the Complainant's EU trademark "AERO VODOCHODY" and EU trademark "AERO VODOCHODY EROSPACE" and Czech trademarks "AERO" in the disputed domain name only by using a hyphen (instead of a space) is a deliberate and calculated attempt to improperly benefit from the Complainant's rights.

ii. THE DOMAIN NAME IS BEING USED IN BAD FAITH

The finding of bad faith is supported by the Panel´s finding that the mere registration of the disputed domain name that is identical or confusingly similar (particularly domain names a widely-known trademark by an unaffiliated entity) can by itself create a presumption of bad faith.

The Panels finds that the disputed domain name "aero-vodochody.com" is used and misused by the Respondent to the detriment of the Complainant because obviously the Respondent could have been the author of the articles formerly published on the web site www.aero-vodochody.com. The Respondent aimed to conceal his identity as a disputed domain holder from the public using the services of an organization called Whoisprotection.cc because this allegation of the Complainant was not denied by the Respondent in this proceedings. The Panel can refer to the reasons that the concealment of the Registrant´s and/or Respondent's identity could be intended to make it difficult for a brand owner to protect its trademarks against infringement, dilution and cybersquatting'. See Oculus VR, LLC v. PrivacyGuardian.org / Vildan Erdogan, WIPO Case No. D2018-0464).

The Panels finds similarly to that extent as it were the reasons in the CAC case No. 102597 that "the disputed domain name has not been used by the Respondent for the purposes of genuine and non-commercial criticism. It is evidenced by the judgments issued by the Czech criminal courts against the Respondent that the Respondent was convicted as an offender of various criminal attacks against the Complainant´s employees with respect to their working activities for the Complainant and that the Respondent's activities were aimed at the Complainant and a good reputation of the Complainant and its employees. The disputed domain name obviously serves as a vehicle and place to commit such criminal activities by the Respondent".

The Panel therefore finds that the Respondent registered and is using the disputed domain name in bad faith in accordance with 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. **AERO-VODOCHODY.COM**: Transferred

PANELLISTS

Name	**JUDr. Vojtěch Trapl**

2020-02-07

DATE OF PANEL DECISION 2020-02-07

Publish the Decision