Decision for dispute CAC-UDRP-102951

Case number	**CAC-UDRP-102951**
Time of filing	**2020-03-05 09:39:48**
Domain names	**queensnake.vip**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Black Noise Kft**

Respondent

Name	**Valeriy Moiseenko**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies on its right to domain names <queensnake.com> and <queensnake.net> registered prior the disputed domain name <queensnake.vip>.

FACTUAL BACKGROUND

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

The Complainant contends that it owns domain names <queensnake.com> registered since 13.7.2010 and <queensnake.net> registered since 14.7.2009. The Complainant therefore relies on its rights to unregistered trademark QUEENSNAKE.

The Complainant has reasonably good faith belief that the disputed domain name is facilitating and promoting the illegal distribution of copyrighted video series produced under the brand name QUEENSNAKE and illegally copying the whole website design, brand name, details of <queensnake.com>. The Queensnake.com is the main copyright owner of the aforementioned brand and all the content produced under <queensnake.com>. The distribution of the content is only permitted through Complainant’s official website. Any other form or outlet of distribution of such content is illegal and constitutes copyright infringement and violation of access rights. Using Complainant’s brand name, website content (web design, texts, images, videos) is neither authorized by the copyright owner nor the law and is clearly in violation of the copyright laws in various jurisdiction to various extents.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has not, 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 Panel did not consider whether the Respondent has 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 Panel did not consider whether 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

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

(i) The 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 domain name; and

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

All these three elements must be proved simultaneously.

I. The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights

The Complainant claims that it owns common law rights in unregistered mark QUEENSNAKE based on its registration of domain names <queensnake.com> and <queensnake.net> used for the adult content.

The disputed domain name is <queensnake.vip>. For the purpose of the assessment of the rights the suffixes COM, NET and VIP (gTLD) should not be taken into account both in case of the unregistered mark and the disputed domain name as the relevant gTLD is the essential part of each domain name and presence of this suffix in the mark doesn't mean nothing for the distinctiveness of the mark.

The "queen snake" (Regina septemvittata) is a species of nonvenomous semiaquatic snake, a member of the subfamily Natricinae of the family Colubridae, being endemic to North America (see https://en.wikipedia.org/wiki/Queen_snake).

It is not necessary to have a registered trademark in order to prove the identicality or similarity according the paragraph 4(a)(i) of the Policy. Many UDRP panels have held that it is possible to obtain unregistered trademark rights to satisfy the requirements of this paragraph. However, to establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys (section 1.3 of the WIPO Jurisprudential Overview 3.0).

The purpose of requiring evidence on this vital and pivotal issue is to show that the name that is claimed to be a trademark

is recognized in the market as the mark of the trader and that the mark is identified with the person who is relying on it (See CAC Case no. 101587 <fitnesspeople.club>). And it is more essential in the case of the marks that are not inherently distinctive like in the case of the name of a species.

In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning (section 1.3 of the WIPO Jurisprudential Overview 3.0). Therefore, the Panel expects that the Complainant presents not only that it uses the unregistered mark, but that the mark acquired the distinctiveness or secondary meaning. The use of the mark itself (i.e. the registration and usage of the Complainant's domain name) doesn't mean that the mark acquired the distinctiveness.

There is simply no evidence to this effect brought forward by the Complainant. The Complainant in this case presented the registration record of the domain name <queensnake.com> and copy of the <queensnake.com> webpage only. This evidence does not prove that the unregistered mark "QUEENSNAKE" has become a distinctive identifier.

The Complainant in the present case has thus not proved or even attempted to prove that it has such an unregistered and/or common law trademark in QUEENSNAKE within the meaning of paragraph 4(a)(i) of the Policy. The Panel finds that the Complainant has not sufficiently demonstrated secondary meaning of the unregistered trademark that identifies it solely (or at least primarily) with the Complainant. In other words, the Complainant did not show that mark QUEENSNAKE has become a distinctive identifier which consumers associate with the Complainant or Complainant's goods and/or services.

II. Rights or Legitimate Interests

As the first element within the meaning of paragraph 4(a)(i) of the Policy has not been met, the Panel did not consider whether the Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

III. Registered and Used in Bad Faith

As the first element within the meaning of paragraph 4(a)(i) of the Policy has not been met, the Panel did not consider whether 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.

The Panel considers that the Complainant has not shown that the disputed domain name is identical to trademarks in which the Complainant has rights. The Panel therefore orders that the disputed domain name remains with the Respondent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **QUEENSNAKE.VIP**: Remaining with the Respondent

PANELLISTS

Name	**JUDr. Petr Hostaš**

DATE OF PANEL DECISION 2020-04-01

Publish the Decision