Decision for dispute CAC-UDRP-103008

Case number	CAC-UDRP-103008
Time of filing	2020-04-14 13:01:25
Domain names	glencore-group.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Glencore International AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Name	James Onuoha Doe

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the registered trademark "GLENCORE" as a word and figure mark in several classes and various countries, including the following US trademark registrations:

1) Reg. no: 2390858
Registration Date: 3 October 2000

2) Reg. no: 2803970
Registration Date: 13 January 2004

3) Reg. no: 4766324
Registration Date: 7 July 2015

FACTUAL BACKGROUND

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

The Complainant is the proprietor of the GLENCORE trademarks. The Complainant was founded in 1974 and officially renamed as Glencore International AG in 1994, the Complainant is involved in the production, marketing and distribution of energy, agricultural and metal commodities. After a merge operation in 2013, the company has become one of the world's largest globally diversified natural resource companies. With its head office based in Baar, Switzerland, the Complainant and its subsidiaries have operations in more than 50 countries with around 150 mining and metallurgical sites, oil production assets and agricultural facilities and have over 158,000 employees worldwide.

The Complainant has an active presence in the US where the Respondent is located - 38 local operations covering the field of Marketing, Metals & Minerals, Energy, and its local offices. Additionally, Glencore has posted numerous job opportunities in the US on LinkedIn in November 2019.

The Complainant has registered several domain names containing the term "Glencore", for example, <glencore.com> (created on 29 May 1996) and <glencore.us> (created on 19 April 2002). The Complainant uses these domain names to connect to a website through which it informs potential customers about its GLENCORE mark and its products and services, and/or to reserve it for defensive purposes.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT

A. THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name, which was registered on 24 December 2019, incorporates the Complainant's registered trademark GLENCORE in its entirety, combined with a generic term "group" and separated by the symbol "-", which is closely related to the Complainant and its business activities. The addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name. The term "Glencore" is distinctively recognizable in the disputed domain name, the disputed domain name should be considered as confusingly similar to the trademark GLENCORE.

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

The Complainant has never granted the Respondent any right to use the GLENCORE trademark within the disputed domain name, nor is the Respondent affiliated to the Complainant in any form.

The disputed domain name and has been actively used to send phishing emails on 7 February 2020 and 10 February 2020 to third parties impersonating the Respondent as a recruiter. The email sender was "Glencore Careers <careers@glencore-group.com>". The Internet users contacted, reported these "Glencore" emails to the Respondent on 10 Feb 2020, asking whether this was genuine information.

In these emails, the sender pretended to be "Glencore Corporate HR|Recruitment Manager" from "Glencore Plc Australia" by putting such information in its signature and sent internet users documents including a "Job Application Form" asking for personal information.

There is no doubt that the disputed domain name was registered with the sole purpose of abusing it towards the Respondent, towards its customers, partners, employees, its related companies, and any third-party internet users. Therefore, the Respondent cannot have registered the disputed domain name for any bona fide offering of goods or services.

The Complainant has not found that the Respondent is commonly known by the disputed domain name or that it has interest over the disputed domain name or the major part of it. When entering the terms "glencore" and "group" in the Google search engine, the returned results all pointed to the Complainant and its business activities. The Respondent could have easily performed a similar search before registering the disputed domain name and would have quickly learned that the

trademarks are owned by the Complainant and that the Complainant has been using its trademarks in many countries around the world including in the US where the Respondent resides. However, the Respondent still chose to register a domain name as such.

In light of the above, evidence show that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services; the Respondent has not by virtue of the content of the website, nor by its use of the disputed domain name shown that it has been commonly known by the disputed domain name, and neither is it making a legitimate, noncommercial or fair use of the disputed domain name. Therefore, the Respondent shall be considered as having no right nor legitimate interest in respect of the disputed domain name.

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

i. THE DOMAIN NAME WAS REGISTERED IN BAD FAITH

It has to be highlighted that the registration of the Complainant's trademarks pre-dates 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.

Also, considering the facts that:

• The Complainant has an active presence under the trademarks GLENCORE in the US where the Respondent resides, therefore the Respondent very likely knew about the Complainant and its trademarks GLENCORE;
• The Respondent has chosen to incorporate the registered trademark GLENCORE in the disputed domain name in its entirety with a generic term "group" which is closely related to the Complainant's business activities;
• The Respondent has used the disputed domain name to send phishing emails to internet users, impersonating the Complainant, the disputed domain name shall be deemed as registered in bad faith.

ii. THE DOMAIN NAME IS BEING USED IN BAD FAITH

Firstly, as noted in the previous paragraphs, the Respondent has used the Disputed Domain Name to send phishing emails to Internet users, impersonating the Complainant, which refers to the Respondent's use of the disputed domain name in bad faith.

Secondly, the Respondent is using a privacy shield to conceal its identity, which is an additional element that contributes to the finding of bad faith use.

SUMMARY

1). The trademark GLENCORE is a registered, distinctive mark worldwide, including in the US where the Respondent is located;
2). The Respondent bears no relationship to the trademarks or the Complainant; it is not commonly known by the disputed domain names nor that it has legitimate interest over the disputed domain names or the major part of it;
3). The Respondent has used the disputed domain name to send phishing emails to internet users, impersonating the Complainant;
4). The Respondent is using a privacy shield to conceal its identity.

In light of the above reasons, it should be concluded that the Respondent has no legitimate interest in the disputed domain name, and that the disputed domain name has been registered and used in bad faith.

RESPONDENT

No administratively compliant Response has been filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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

Per paragraph 4(a) of the Policy, for this Complaint to succeed concerning the disputed domain name the Complainant must prove the following:

(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.

A. Identical or Confusingly Similar

Regarding the first step under this element, and as per evidence on record, the Panel is satisfied that the Complainant has shown it owns rights in the GLENCORE trademark.

Turning our attention to the second component under this element, namely, assessing the confusing similarity between the disputed domain name and the trademark, the Panel notes that the disputed domain name reproduces the trademark GLENCORE in its entirety, with the addition of hyphen and the generic word “group”. These additional elements are not enough to dispel a finding of confusing similarity between the disputed domain name and the trademark. If anything, the addition of the term “group” enhances the perception of confusing similarity, since the Complainant operates a global business through a variety of foreign subsidiaries.

Based on this, the Panel finds the disputed domain name to be confusingly similar to the Complainant’s trademark. As a result, the Panel determines that the Complaint has satisfied the first element set under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

For the Complainant to succeed under the second element of the Policy, it has to show a prima facie case, which consequently shifts the burden of proof to the Respondent (see Berlitz Investment Corp. v. Stefan Tinculescu, WIPO Case

No. D2003-0465).

In this case, the Respondent failed to produce allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name.

Based on the evidence on record, the uncontested facts indicate that a) the Respondent is not commonly known as the disputed domain name; b) the Respondent is not affiliated with the Complainant and is not authorized to carry out any activity for the Complainant and c) the Respondent has not acquired trademark rights on this term.

In addition to this, the Complainant has provided evidence of phishing emails originating from the disputed domain name to obtain valuable personal information from Internet users under the fraudulent guise of posing as the Complainant. A more thorough analysis of this conduct is provided under the third element below.

This fact pattern leads the Panel to conclude that the Respondent does not have rights or legitimate interests in the disputed domain name.

In conclusion, the uncontested facts on record and the balance of probability, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name and consequently the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The trademark is referenced by the Respondent in the disputed domain name. Furthermore, the Respondent appears to have registered and used the disputed domain name with one of its main objectives being the fraudulent use of the disputed domain name, namely for phishing activities. The panel believes this conduct embodies the thrust of circumstances exemplified as evidence of bad faith under Paragraph 4(b) of the Policy (see Lockheed Martin Corp. v. Reid Harward, WIPO Case No. D2000-0799).

Accordingly, the Panel finds that the Complainant has satisfied the requirements set forth under paragraph 4(a)(iii) of the Policy.

D. Decision

For the aforementioned reasons, per Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **GLENCORE-GROUP.COM**: Transferred

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2020-05-12

Publish the Decision