Decision for dispute CAC-UDRP-103324

Case number	CAC-UDRP-103324
Time of filing	2020-10-02 14:50:12
Domain names	3shapealigner.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	3Shape A/S

Complainant representative

Organization	BRANDIT GmbH

Respondent

Organization	Osman Golcuk, Telmar Iletisim Hizmetleri A S

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 has proven to be the owner of the 3SHAPE mark.
The Complainant is, inter alia, the owner of the following trademarks:
International trademark registration no.: 779184: “3shape” registered on December 15, 2001;
International trademark registration no.: 1142176 “3shape” registered on October 15, 2012;
International trademark registration no.: 1271231 “3shape” registered on August 31, 2015;
International trademark registration no.: 1095013 “3shape Communicate” registered on August 31, 2015;
International trademark registration no.: 1043547 “TRIOS®” registered on May 19, 2010 (designating Turkey).

The Complainant has proven to also be the holder of the following domain names containing the term “3SHAPE”: <3shape.com> (registered on May 17, 2000), <3shapeacademy.com> (registered on June 23, 2015) and <3shapecommunicate.com> (registered on March 3, 2011).

FACTUAL BACKGROUND

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

3Shape A/S is a developer and manufacturer of 3D scanners and computer-aided system/computer-aided manufacturing ("CAD/CAM"), in the dental and hearing aid industries. Based in Denmark, 3Shape A/S provides dental and hearing aid professionals with industry-leading scanners and fully integrated software programs that create highly streamlined processes for dental treatments.

3Shape A/S is a widely known company in the dental and hearing aid industries globally. According to its Annual Report 2019, 3Shape A/S employs more than 1,750 persons in 26 countries. 3Shape A/S has headquarters and offices in many countries around the world (Europe, America and Asia-Pacific).

3Shape has a vast global network of industry experts, doctors and lab technicians and gains valuable patient and industry insights that help the company to maintain a patient-centered approach to product development. 3Shape systems and products are used by numerous clinics and labs in over 100 countries across the globe.

Due to extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of notoriety in the field of dentistry around the world.

The Complainant's 3SHAPE trademarks significantly predate the registration of the disputed domain name.

The disputed domain name was registered on November 14, 2019.

The disputed domain name resolves to an active website hosting content that is directly related to the Complainant and its business.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant claims that the disputed domain name is confusingly similar to the Complainant's registered trademark; that the Respondent has no rights or legitimate interests whatsoever with respect to the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith.

The Complainant's claims are here below summarized:

3Shape A/S is a widely known company in the dental and hearing aid industries globally;
The Complainant's trademark is entirely reflected in the disputed domain name and is therefore confusingly similar to the Complainant's trademark;
The Respondent has no relationship whatsoever with the Complainant or its 3SHAPE trademark and is not commonly known by the disputed domain name;
The Respondent knew of the Complainant's trademark when it registered the disputed domain name;
The Respondent is using the disputed domain name to resolve to an active website displaying the trademarks of the Complainant and suggesting endorsement and/or sponsorship;
The Respondent intentionally attempts to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks;
The Respondent has never replied to the communications sent by the Complainant;
The Respondent has registered and used the disputed domain name in bad faith.

RESPONDENT:

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 Complainant has requested, should he language of the registration agreement be different, to proceed in English.
In this regard the Panel simply notes that according to the Registrar verification the registration agreement is in English, therefore the language of the proceedings is English as well. Owing to this there is no need to evaluate arguments in favor of this request.

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

A) Confusing similarity

The Panel agrees with the Complainant's assertions that the addition of the descriptive term, “aligner”, does not prevent the disputed domain name from being confusingly similar to the Complainant’s trademarks.

B) Lack of legitimate rights or interests

The disputed domain name is a distinctive, non-descriptive name. It is unlikely that the Respondent registered the disputed domain name without having the Complainant firmly in mind. The Complainant’s assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorized by the Complainant are sufficient to constitute a prima facie demonstration of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The burden of evidence therefore shifts to the Respondent to show, using tangible evidence, that it does have rights or legitimate interests in the disputed domain name. The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C) Registered or Used in Bad Faith

The Complainant gives sound bases for its contention that the disputed domain name was registered and has been used in bad faith.

Firstly, owing to the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademarks, and so the Panel finds on the balance of probabilities that the Respondent was aware of the Complainant’s trademarks when registering the disputed domain name.

Secondly, the Panel accepts the Complainant’s unchallenged assertion that the Respondent registered the disputed domain name with the aim of creating a likelihood of confusion with the Complainant’s trademarks.

Thirdly, it appears from the document provided by the Complainant that the Respondent is using the disputed domain name to resolve to an active website displaying the trademarks of the Complainant and suggesting endorsement and/or sponsorship.

Fourthly, the Respondent has not responded to nor denied any of the assertions made by the Complainant in the cease and desist letter and in this proceeding.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **3SHAPEALIGNER.COM**: Transferred

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2020-11-11

Publish the Decision