Decision for dispute CAC-UDRP-103329

Case number	CAC-UDRP-103329
Time of filing	2020-11-03 15:30:24
Domain names	palantiry.com

Case administrator

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

Complainant

Organization	Palantir Technologies Inc.

Complainant representative

Organization	RiskIQ, Inc. - Incident, Investigation and Intelligence (i3), Jonathan Matkowsky

Respondent

Organization	Pixelspony

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 is a registered owner of the trademarks “PALANTIR” in different jurisdictions:

Some of the most relevant trademarks are as follows:

• Word EU trademark “PALANTIR”, No. 006174627, registered in Classes 35, 38 and 41 of the Nice Classification. Priority date: February 20, 2007.

• Word EU trademark “PALANTIR”, No. 011251485, registered in Classes 9 and 42 of the Nice Classification. Priority date: February 15, 2008.

• International Registration of a word trademark “PALANTIR”, No. 1435896 in Classes 35, 38, 41 and 42 of the Nice Classification designated China. Priority date: July 5, 2018.

• Word US trademark “PALANTIR”, No. 3,671,386, in use since August 2005 and registered in Class 42 since 25 of August,

2009. Priority date: February 20, 2007.

• Word US trademark “PALANTIR”, No. 3,585,690, in use since August 2005 and registered in Class 9 since 10 of March, 2009. Priority date: February 15, 2008.

FACTUAL BACKGROUND

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

The Complainant is an American technology company based in Denver, Colorado. Founded in 2004, the Complainant specializes in a big data analytics and provides its services to both public and private entities across different sectors of industries.

No information is known about the Respondent who registered the disputed domain name <PALANTIRY.COM> on October 10, 2020. The disputed domain name is not currently used in connection with any goods or services and resolves in blank page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Identical or confusingly similar

The Complainant argues that the disputed domain name <PALANTIRY.COM> and the Complainant's registered trademarks are confusingly similar.

The Complainant states, in particular, that the registered trademarks and the disputed domain name are homophones as the name PALANTIR, which originates form The Lord of the Rings movie, shall be pronounced as "palantíry" or "palantíri", i.e. exactly in a way how the disputed domain name is written.

No rights or legitimate interests

The Complainant argues that there is no evidence at all that the Respondent is commonly known by the disputed domain name or a name corresponding to the disputed domain name, nor that the Respondent is using it for offering goods or services in the market.

The Complainant states furthermore, that the website to which redirect the disputed domain name is currently parked with commercial ads which does perceive as a clear proof of a lack of any legitimate interests in a domain name.

Registered and used in bad faith

As far as bad faith registration is concerned, the Complainant states that the disputed domain name misleadingly suggests an affiliation with the Complainant and has been registered only to attract internet users who confuse the webpage at the disputed domain name with the Complainant. This activity is performed with the purpose of getting financial compensations from advertisement placed on the webpage at the disputed domain name, which, according to the Complainant, amounts per se to bad faith use.

RESPONDENT:

The Respondent did not respond to the Complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to trademarks 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 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

Paragraph 15 of the Rules states that the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel shall draw such inferences therefrom as appropriate.

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant.

The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidences provided in support of them.

1. The Complainant owns different trademarks with earlier priority date (comparing to the disputed domain name registration date), whose common distinctive element is identical to the Complainant name "PALANTIR". Besides the EU protection, the trademarks are protected in the Respondent's country of origin – the United States of America.

The disputed domain name <PALANTIRY> comprises of the distinctive element "PALANTIR-" followed by the letter "Y" and the Top-Level domain ".com" which needs to be disregarded under the confusing similarity test (as it is a technical requirement of registration).

The Complainant's trademarks are thus fully comprised in the disputed domain name. Furthermore, the Panel finds that the additional element "Y" does not alter the overall similarity of the registered trademarks and the disputed domain name.

Consequently, the trademarks "PALANTIR" and the disputed domain name "PALANTIRY" result phonetically, visually and conceptually almost identical.

The Panel considers therefore, that the disputed domain name reproduces the Complainant's previously registered trademarks to the extent that they are confusingly similar.

The Panel accordingly concludes that paragraph 4(a)(i) of the Policy is satisfied.

2. The Respondent does not appear to be in any way related to the Complainant's business, and is not the agents of the Complainant. The Respondent is not currently known and has never been known as “PALANTIRY”, or any combination of the complainant’s trademark.

Currently, the disputed domain name <PALANTIRY> does not appear to be associated with any webpage.

Therefore, the Respondent does not seem to have a legitimate interest in the disputed domain name.

In the absence of a Response, the Panel finds therefore that the Respondent has no rights or legitimate interests in the disputed domain name, so that the requirements of paragraph 4(a)(ii) of the Policy are met.

3. As to the bad faith at the time of the registration, the Panel finds that, in light of the distinctiveness of the Complainant’s trademarks which is derived form an internationally well-known movie but does not suggest the Complainant’s services or business activity, the Respondent was more likely be aware of the Complainant’s trademark at the time of the registration of the disputed domain name.

Finally, despite of the Complainants contentions explained in the complaint, the Panel finds that the disputed domain name does not resolve to any website or other on-line presence.

In this regard, prior panels have discussed the passive holding of a domain names (e.g. in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003) and found that the passive holding itself can constitute bad faith use.

The Panel recalls that „the relevant issue is not whether the Respondent is undertaking a positive action in bad faith in relation to the domain name, but instead whether, in all the circumstances of the case, it can be said that the Respondent is acting in bad faith”. (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

The particular circumstances of this case, allow the Panel to infer that this is the case when the inactivity of the domain name holder could be considered as a bad faith use, given that:

(i) The Complainant’s business name and trademarks “PALANTIR” have a wide online presence (and appears as the only result in Google search when searching for “PALANTIR”);

(ii) The word element “PALANTIRY” represents almost identical version of the Complainants registered trademarks “PALANTIR” where the addition of the repetitive end letter “Y” at the end of the in the disputed domain name could be perceived as allusive to the Complainant’s trademarks;

(iii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name.

Bearing in mind these circumstances, the Respondent can be deemed to have registered the disputed domain name to free ride on the Complainant’ goodwill. Under such circumstances, the Respondent’s activity is indicative of registration and use of the disputed domain name in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied 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. **PALANTIRY.COM**: Transferred

PANELLISTS

Name	**JUDr. Hana Číslerová, LL.M.**

DATE OF PANEL DECISION 2020-12-14

Publish the Decision