Decision for dispute CAC-UDRP-103407

Case number	CAC-UDRP-103407
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Domain names	centrumflebologii.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Name	Ms. Anna Narojczyk

Complainant representative

Name	Krzysztof Szura

Respondent

Name	Tatyana Grishina

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

In this proceeding, the Complainant relies on the following trademark:
- the EU trademark (figurative) No. 018190909, registered on 11 June 2020.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant is the owner of the registered trademark “Centrum Flebologii” – the European Union trademark figurative registration No. 018190909, registered on 11 June 2020 for goods and services of classes 10, 35, 41, 44.
The Complainant is also the co-owner of domain name centrumflebologii.pl since 23 October 2002 and has been using this domain name since at least 1999 as a company name and a trade name (business identifier).
The Complainant claims that her trademark is well-known in Poland and EU among medical specialists and patients with

problems with veins disorders. The Complainant conducts research and carries out specialized, state-of-the-art treatments and her medical centre is one of the leading phlebological centres in the world.
The Complainant asserts that she is also recognized among doctors dealing with phlebology and has trained over 300 doctors from all over Europe and has so far provided services to over 33,000 patients.
The disputed domain name was created on 12 December 2019.
The Complainant states that the website by the disputed domain is an identical copy of the Complainant's website – both trademark and business name of the Complainant were displayed together with the colours, font type, graphics and texts of the Complainant's main website. The Complainant has sent a cease and desist letter and demanded that the Respondent stopped unlawful actions. The Respondent has not responded to the letter.
The disputed domain name incorporates the Complainant's trademark in its entirety and the trademark is clearly recognizable within the disputed domain name.
Therefore, the Complainant states that the disputed domain name is confusingly similar with her trademark.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that she has no relationships whatsoever with the Respondent and has never authorized the Respondent to use the disputed domain name or any other domain name.
Moreover, the Respondent has not acquired trademark or service mark rights and the Respondent's use and registration of the disputed domain name was not authorized by the Complainant. In the absence of any license or permission from the Complainant to use the trademark, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed.
The Complainant states that neither license nor authorization has been granted to the Respondent to use the Complainant's trademark or to apply for registration of the disputed domain name.
The Complainant indicates that the Respondent most likely has had the intention to run a medical centre under the disputed domain name which clearly demonstrates the lack of rights or legitimate interests.
The Complainant cites the "Oki Data test" and indicates that the Respondent failed to satisfy the requirements of the "Oki Data test".

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant states that the "Centrum Flebologii" is a well-known trademark among doctors and patients dealing with vein problems. The Complainant claims that taking into account the distinctive character and the well- known status of the "Centrum Flebologii" trademark the Respondent was aware of such trademark while registering the disputed domain name.
The disputed domain name was created without adding any special sign or generic term to the trademark "Centrum Flebologii" which demonstrates the bad faith of the Respondent. In the Complainant's opinion, bad faith of the Respondent is supported by the fact that the disputed domain name is active and serves to show the Respondent's website which is a copy of the Complainant's website.
The Respondent's website contains all graphic, fonts and text elements that have been created by the Complainant. In particular, the layout of the page, bookmarks, description of services, photographs and information about the Complainant's staff has been copied, with the content translated into Czech language, although the Complainant is not targeting her services to citizens (patients) in the Czech Republic.
Moreover, the Respondent has used exactly the same statistics on the Complainant's client's medical treatments and research updated as of December 2019.

The Complainant cites previous UDRP decisions, i.e. Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 ("it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith") and CAC Case No 101285 where the Panel held that "the offer for sale is already indicative of registration and use of the domain name in bad faith" and believes that the above action of the Respondent confirms an obvious bad faith.
The Complainant also emphasizes that the disputed domain name serves as a "bait" to attract customers to Respondent's website, rather than merely as a descriptor of the Respondent's products and services.
The Complainant adds that a finding of bad faith also means that the Respondent's use of the disputed domain name

cannot be regarded as “fair”, or “legitimate”, nor as a use in connection with a bona fide offering of goods or services.
It is incumbent upon the Respondent to come forward with concrete evidence rebutting the assertion that the Respondent has no rights or legitimate interests connected to the disputed domain name.
The Respondent’s disputed domain name registration, and the continuous use, appears to be an attempt to exploit the fame and goodwill of Complainant’s trademark by diverting Internet traffic intended for Complainant’s website to Respondent’s own website.
By using the trademark on both the website and in the disputed domain name, visitors may think that they are visiting a website which is affiliated with the trademark holder. Bearing in mind the Respondent’s failure to respond to the cease and desist letter is an evidence of bad faith in the registration of the disputed domain name, in the Complainant’s view.

The Complainant states that taking into account the reputation associated with the Complainant’s trademark, there is no conceivable legitimate use of the disputed domain name by the Respondent.
Any use of the disputed domain name by the Respondent is likely to constitute passing off or an infringement of the Complainant’s trade mark rights and the Respondent is using the disputed domain name to intentionally attract, for commercial gain, Internet users to the website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website.

PARTIES CONTENTIONS

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

In the view of the Panel, taking into account findings in respect of the bad faith issue, there is no need to consider this element for the purpose of this proceeding.

BAD FAITH

The Complainant has not, 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.

Language of the proceeding.

The language of the registration agreement is Russian.
The Complainant requested this proceeding to be conducted in English. The Complainant states that she is a Polish national and the Respondent is from Russia. Both Parties are not English native speakers. English is one of the most popular languages in the world and is commonly used in international communication. Conducting proceeding in Russian would impose a significant and undue burden on the Complainant.

The language of the administrative proceeding shall be the language of the Registration Agreement, however under par. 11 (a) of the Rules the Panel has the authority to determine otherwise, having regard to the circumstances of the administrative proceeding.
The Panel agrees with the request of the Complainant and finds that the language of the proceeding shall be English.

The Panel decided so taking into account that the disputed domain name is in the .com zone that is considered international,

the registrar – Reg.ru has an English language version of its website, the Complainant and her representative are from Poland and English is not their native language, so they do not receive significant advantages over the Respondent, the Respondent has been given a fair chance to object but has not done so and with the view of par. 4.5.1. of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (WIPO Overview 3.0.).

It is the Panel's obligation to ensure that the administrative proceeding takes place with due expedition under paragraph 10 (c) of the UDRP Rules, ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case and in the Panel's opinion it would be fair to have English as the language of this proceeding.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or confusingly similar with Complainant's trademark

The Complainant is the owner of the EU trademark (figurative) with the word elements "Centrum Flebologii".

First, the Panel notes that the Complainant's trademark was registered on 11 June 2020, whereas the disputed domain name was registered on December 12, 2019.
As stated in WIPO Overview 3.0: "the fact that a domain name may have been registered before a complainant has acquired trademark rights does not by itself preclude a complainant's standing to file a UDRP case, nor a panel's finding of identity or confusing similarity under the first element" (see par. 1.1.3).
However, this fact affects analysis of the bad faith element.

Second, the Complainant's trademark is expressly referred to as "figurative" or "design" in the EUIPO registration.
Under WIPO Overview 3.0., par. 1.10: "assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark…Trademark registrations with design elements would prima facie satisfy the requirement that the complainant show "rights in a mark" for further assessment as to confusing similarity… However where design elements comprise the dominant portion of the relevant mark such that they effectively overtake the textual elements in prominence, or where the trademark registration entirely disclaims the textual elements (i.e., the scope of protection afforded to the mark is effectively limited to its stylized elements), panels may find that the complainant's trademark registration is insufficient by itself to support standing under the UDRP".

The Panel now needs to assess whether the disputed domain name is confusingly similar with the Complainant's mark, namely with its textual part.

The Complainant's mark includes the word elements "Centrum Flebologii" and these word elements are clearly visible in the trademark.
These word elements can be translated from Polish into English as "Center of Phlebology".
Such elements are descriptive of Complainant's activity and the goods and services for which the trademark is registered as they are related to medical activity and medical services, in particular treatment of vein disorders.

How strong is a trademark with such word elements from a legal protection point of view? There is no information that the word elements of the Complainant's trademark are disclaimed and their actual strength is a matter of assessing the second and the third criteria of the UDRP.

As stated by Panel in Career Group, Inc. v. The Career Group Ltd / Deborah Simonds, WIPO Case No. D2014-1296: "UDRP panels customarily treat the first element of the Policy as a standing requirement, which simply requires "a straightforward visual or aural comparison of the trademark with the alphanumeric string in the domain name…" A domain name may be confusingly similar to the words or other characters that are dominant elements of a trademark…"
The disputed domain name fully incorporates the word elements of the mark without any additions and the Panel finds that this is enough to find confusing similarity taking into account that these word elements are not disclaimed.

The gTLD suffix ".com" is to be disregarded under the confusing similarity test.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

In light of the Panel's finding in respect of the third element of UDRP, it is unnecessary for the Panel to address the issue of the Respondent's rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The disputed domain name was registered on 12 December 2019 before the registration date of the Complainant's trademark and even before the trademark application was filed (filing date is 2 February 2020).

It is a general rule that "where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent" (see WIPO Overview 3.0, par. 3.8.1) unless a disputed domain name was registered in anticipation of the trademark rights (see par. 3.8.2 of WIPO Overview 3.0).
The Complainant can also rely on unregistered/common law trademark rights that pre-date registration of the disputed domain name.

The Complainant did not address this issue in her complaint directly nor did she rely on any unregistered trademark rights.

The Complainant only mentioned that she had been using the name since 1999 as a business identifier (trade name) and provided a copy of the extract from business registry of Poland where the date of commencement of business activity is 1998-10-15.
However, only trademark rights can be relied on in UDRP proceedings and a business name as such is not a trademark.
The Complainant also provided screen shots from her .pl website dated 17 November 2020 and proof of registration of centrumflebologii.pl domain name in 2002. These were the only pieces of evidence provided by the Complainant in support of her rights (in addition to the trademark certificate).

The Complainant made a number of assertions relevant for the bad faith element that the Panel needs to address:
1) The Complainant claims thar her trademark has "the distinctive character and the well-known status" and that "Centrum Flebologii" is well-known in Poland and the EU among medical specialists and patients with problems with veins disorders. The Complainant's medical centre is "one of the leading phlebology centres in the world" and "the Complainant has trained over 300 doctors from all over Europe and has so far provided its services to over 33 thousand patients".
2) The Complaint argues that "taking into account the distinctive character and the well-known status of the "trademark the Respondent was aware of such trademark while registering the disputed domain name".
3) The Respondent's registration and continuous use of the disputed domain name appears to be an attempt to exploit the fame and goodwill of Complainant's trademarks.
4) Taking into account the reputation associated with the Complainant's trademark, there is no conceivable legitimate use of the disputed domain name by the Respondent.

None of these statements of the Complainant are supported by evidence.
There is no evidence that would demonstrate "well-known status" of the Complainant's trademark in Poland, the EU or elsewhere, its fame and goodwill, no information and data that would confirm Complainant's statements regarding training of doctors or treatment of patients.

There is no proof that Complainant's clinic is "one of the leading in the world" or any proof of distinctiveness of the word elements of the trademark.
The Complainant has been doing business in Poland and providing services there, however there is nothing to prove that its mark, in particular its word elements, has reputation either in Poland or outside Poland.
It is also unclear to what extent Complainant's medical centre is known outside Poland and whether the Complaint also promotes services outside Poland, i.e. in Russia or the Czech Republic. The Complainant expressly mentioned in her complaint that "the Complainant is not targeting its services to citizens (patients) in the Czech Republic".

The Complainant's website is entirely in Polish.

A mere fact that Complainant's business name has been registered in Poland since 1998 alone does not give rise to any fame, goodwill and does not create any trademark rights. Registration and use of the .pl domain name do not automatically create trademark rights either.

The Complainant did not provide any evidence of commercial use of the word elements of its trademark – "Centrum Flebologii" and any consumer recognition of these terms as being associated primarily with the Complainant prior to the registration date of the disputed domain name.

The Complainant claims that the disputed domain name is active and is used for competing services in the Czech Republic and the Complainant' website content has been copied.
The disputed domain name is inactive on the date of this decision. The Panel is ready to accept that the disputed domain name was active at some point in the past according to the evidence provided by the Complainant (screen shots of the website by the disputed domain name). The screen shots provided by the Complainant show that the disputed domain name at least on 17 November 2020 was used for a website offering medical services in the Czech Republic.
The Complainant claims that such website by the disputed domain name copied content of the Complainant's website, its graphic, fonts, etc.

However, the Panel notes that UDRP does not intend to deal with any copyright infringement claims per se and it is not for this Panel to assess whether there was a copyright infringement in this case.

The Complainant sent a cease and desist letter to the Respondent but received no response. Failure to respond to a cease and desist letter can, under certain circumstances, indicate bad faith however this fact alone is not sufficient for finding bad faith.

The Panel notes that the word elements of the Complainant's trademark "Centrum Flebologii" are very weak and, at best, descriptive. They mean "Centre of Phlebology" and indicate services relating to treatment of vein disorders.

Under paragraph 10(a) of the Rules the Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and the Rules and the Panel shall be able to independently visit the Internet in order to obtain additional information (see Société des Produits Nestlé SA v. Telmex Management Services, WIPO Case No. D2002-0070).

The Panel has found out in its independent research that the Complainant is not the only person associated with "Centrum Flebologii" in Poland and there are other businesses using the same terms in Poland, e.g. https://europejskiecentrumflebologii.pl/europejskie-centrum-flebologii/ , https://www.chiramed.pl/pl/109/o-centrum-flebologii . Such terms as "Centrum" ("Centre") and "Flebologii" ("Phlebology") are widely used and can be understood outside Poland, in particular in the Czech Republic and Slovakia. Highly similar terms are used for a medical centre in the Czech Republic, see https://www.flebocentrum.cz.

The Complainant registered the mark only in 2020 and the mark is registered as a figurative mark. While in the Complainant's EU registration the word elements are not disclaimed, the same or similar word elements would have been disclaimed in some other jurisdictions.
For instance, the Panel in its research has found a number of trademarks with the word element "Phlebology" (in different languages) disclaimed, i.e. Russian national trademark No. 715769 (figurative mark with word elements "Clinic of Modern Phlebology", all words are disclaimed), Russian national trademark No. 758186 (figurative mark with word elements including such words as "Phlebocentre" and "Phlebology", all words are disclaimed), US national trademark No. 4490132 (figurative mark with the word elements "The College of Phlebology", all word elements are disclaimed).

Both "Centrum" and "Flebologii" are weak terms referring to medical services and phlebology services in particular, and in this proceeding there is no evidence that on the date of the registration of the disputed domain name, namely 12 December

2019, the words “Centrum Flebologii” associated exclusively or primarily with the Complainant and that the Respondent had the Complainant in mind while registering the disputed domain name.

UDRP requires proof of both registration and use of a domain name in bad faith and any conclusory allegations of bad faith have to be supported by evidence (see e.g. Tristar Products, Inc. v. Domain Administrator / Telebrands, Corp., FA 1597388 – “mere assertions of bad faith, even when made on multiple grounds, do not prove bad faith” and Chris Pearson v. Domain Admin / Automattic, Inc., FA 1613723).

WIPO Overview 3.0 is very clear and states that “Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark. Complaints alleging the types of conduct described in UDRP paragraph 4(b) should be supported by arguments and available evidence... Even in cases of respondent default, panels have held that wholly unsupported conclusory allegations may not be sufficient to support a complainant’s case” (see par. 3.1). The same has been consistently held by UDRP Panels (see e.g. CAC Case No. 102809 – “the Complainant has made contentions which are not sufficiently or adequately supported by the evidence submitted, in particular regarding the third element” and CAC Case No. 102225 - “the onus of proof lies on the Complainant”).

There is nothing in this case that would demonstrate that the Respondent registered the disputed domain name in bad faith and that the Respondent targeted the Complainant.
In addition to the assertions referred to above the Complainant also cited some UDRP cases (Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 and CAC Case No 101285 – “the offer for sale is already indicative of registration and use of the domain name in bad faith”), however it is unclear to the Panel how these cases are relevant in this dispute, i.e. if there is no proof of offer for sale of the disputed domain name.

On the date of registration of the disputed domain name the Complainant did not have any registered trademark rights and no proof of existence of unregistered trademark rights was provided to the Panel.
Prior registration of a business name and .pl domain name as such do not create trademark rights.

There is no evidence of any anticipation of trademark rights (see par. 3.8.2 of WIPO Overview 3.0), i.e. (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent’s insider knowledge (e.g., a former employee), (iii) further to significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant’s filing of a trademark application.

Given the descriptive nature of the word elements of the trademark, it is not inconceivable to imagine good faith registration of the disputed domain name.

As stated by one of the previous panels “It is well established in cases under the Policy that, for registration in bad faith to be made out, a complainant must demonstrate two elements, both on the balance of probabilities. First, the complainant must show that the respondent had or is likely to have had knowledge of the complainant’s mark when it registered the domain name concerned. Secondly, the complainant must show that the respondent had bad faith intent at the point of registration of the domain name to target the complainant’s rights in such mark” (see Tractor Supply Co. of Texas, LP, Tractor Supply Company v. Itai Dor-On / Domains By Proxy, LLC, WIPO Case No. D2015-0026).

The Panel cannot conclude that the disputed domain name was registered in bad faith.

The current dispute involves a figurative trademark with very weak word elements that was registered after the registration of the disputed domain name and there is no evidence of distinctiveness and well-known status of the Complainant’s trademark (its word elements) or existence of any unregistered trademark rights in the word elements prior to the date of registration of the disputed domain name.

The Panel finds that the Complainant failed to satisfy the third requirement of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **CENTRUMFLEBOLOGII.COM**: Remaining with the Respondent

PANELLISTS

Name	**Igor Motsnyi / Mocni Konsalting doo**

DATE OF PANEL DECISION 2020-12-27

Publish the Decision