

Decision for dispute CAC-UDRP-103556

Case number CAC-UDRP-103556

Time of filing 2021-02-12 09:14:54

Domain names edubirdies.org

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization I3 TECHNOLOGY LTD

Respondent

Organization PrivacyYes.com

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 the exclusive licensee of various registered trade mark rights for the EDUBIRDIE word mark under the terms of an exclusive licence agreement dated September 10, 2019 from Plan B Services LLC. The trade marks subject to this licence include: United States trade mark registration 5699892 for EDUBIRDIE registered on March 19, 2019, International trade mark registration 1401021 for EDUBIRDIE registered on August 31, 2017 protected in various countries including, in particular, the United Kingdom and the Russian Federation and Ukrainian trade mark registration 259395 for EDUBIRDIE registered on June 10, 2019.

FACTUAL BACKGROUND

Since 2015 the Complainant based in Bulgaria has offered various writing services to an international audience through its website at <edubirdie.com>. The Complainant also owns various other domain names that are similar to its EDUBIRDIE brand including edubirdies.com

The Respondent registered the disputed domain name on February 15, 2018 and appears to have operated a website from this domain name since at least May 2018. The Respondent also offers writing services from this website.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Complainant's contentions are presented in Principal Reasons for the Decision.

RESPONDENT:

No administratively compliant response was 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 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. The Panel notes that the true registrant disclosed by the registrar after filing of these proceedings, one Joe Nelson, should be added as a co-respondent to these proceedings. The Panel notes that the owner of the registered trade mark rights for EDUBIRDIE consents to the transfer of the disputed domain name to the Complainant.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has demonstrated that it is the exclusive licensee of various registered trade mark rights for the EDUBIRDIE trade mark. These licensed rights include, in particular: United States trade mark registration 5699892 for EDUBIRDIE registered on March 19, 2019, International trade mark registration 1401021 for EDUBIRDIE registered on August 31, 2017 protected in various countries including, in particular, the United Kingdom and the Russian Federation and Ukrainian trade mark registration 259395 for EDUBIRDIE registered on June 10, 2019. As a result the Panel finds that the Complainant owns relevant trade mark rights for the purposes of the Policy.

The disputed domain name wholly incorporates the EDUBIRDIE trade mark and is therefore confusingly similar to it. The addition of the letter "s" in the disputed domain name does not alter this finding and the Complaint therefore succeeds under paragraph 4(a)(i) of the Policy.

The Complainant submits that the Respondent offers, through its website at <edubirdies.org>, identical services to those supplied by the Complainant and uses a logo that is similar to a logo used on the Complainant's website and that the Respondent's website overall is very similar to the Complainant's website at <edubirdie.com> or to which the Complainant's domain name <edubirdies.com> is re-directed. Certainly upon a side by-side comparison of the website screenshots provided in evidence by the Complainant the Panel finds that the Respondent's website, although not identical, has a similar look to the Complainant's website and features a variant of the Complainant's distinctive EDUBIRDIE logo and appears to offer the same type of writing services. Internet users arriving at the Respondent's site could easily be confused into thinking that they were at the Complainant's site or at a website endorsed or sponsored by the Complainant.

The Complainant has submitted that it did not grant the right or entitlement to use its EDUBIRDIE mark and that it is not aware that the Respondent has been granted any rights to the EDUBIRDIE trade mark despite the Respondent's usage of a TM symbol. It has submitted further that the Respondent is not (either as an individual, business or other organisation) commonly known by the name EDUBIRDIE and that there is nothing on the Respondent's website at the disputed domain name that indicates to Internet users that the Respondent is not the Complainant and has no affiliation with it.

The Complainant submits that it believes that the Respondent is using the disputed domain name to falsely suggest an affiliation with the Complainant and its EDUBIRDIE business and to impersonate the Complainant in order to re-direct

Internet users through the Respondent's website to either make an order on the website at <essayassist.com> or by pressing the "Continue" button to enter the main site at <essayassist.com> and that such usage is intended to re-direct Internet users for the Respondent's own personal gain.

The Panel finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name and that it is using the disputed domain name to masquerade as, or as having some affiliation with, the Complainant's EDUBIRDIE mark and business, when this is not the case and for its own commercial gain. The Respondent has failed to rebut this case and its use of the disputed domain name in this manner is clearly inconsistent with bona fide use of the disputed domain name. As a result the Panel finds that the Complainant succeeds under paragraph 4(a)(ii) of the Policy.

The disputed domain name was registered on February 15, 2018 which is after the registration of the International trade mark registration 1401021 for EDUBIRDIE on August 31, 2017 and several years after the Complainant's stated first use of its main website at <edubirdie.com>. The EDUBIRDIE mark is highly distinctive and also considering the degree of similarity in the overall look of the Respondent's website at the disputed domain name and the Respondent's use on its website of a logo that appears to be derived from the Complainant's distinctive EDUBIRDIE logo and also considering the very high degree of similarity in services offered at the Respondent's website, it appears to the Panel that the Respondent was more likely than not well aware of the Complainant's EDUBIRDIE mark and business when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of a web site or location or of a product or service on the web site amounts to evidence of registration and use in bad faith.

The Panel finds that the Respondent has in this case used the disputed domain name to attract, for commercial gain, Internet users to its own web site. Internet users are likely to be confused by the use of the EDUBIRDIE mark in the disputed domain name and upon arrival at the Respondent's website, by the look of the Respondent's website, the use of the name "Edubirdies" and of a logo that is at least evocative of the Complainant's bird logo, into thinking that the website belongs to or is affiliated with the Complainant. There appears to be nothing on the website at the disputed domain name to indicate that the Respondent's website and writing services business has no affiliation with the Complainant.

It therefore appears to the Panel that the Respondent has used the disputed domain name intentionally in an attempt to masquerade as and to compete commercially with the Complainant and has sought to divert Internet users in an effort to offer them its competing writing services. This conduct is clearly in bad faith and fulfills the requirements of paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the Complaint also succeeds under 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. EDUBIRDIES.ORG: Transferred

PANELLISTS

Name	Alistair Payne
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DATE OF PANEL DECISION 2021-03-20

Publish the Decision
