

Decision for dispute CAC-UDRP-103553

Case number	CAC-UDRP-103553
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Time of filing	2021-02-22 10:18:52
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Domain names	filehippo.digital
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	FileHippo s.r.o.
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Complainant representative

Organization	Rudolf Leška, advokát
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Respondent

Organization	Vinh ho agency ghost
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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 claims rights on several trademark registrations, such as:

- The registered EU word mark FILEHIPPO No 008893745 for goods and services in the class 9, 35 and 42 with priority from February 18, 2010;
- The registered US word mark FILEHIPPO No 6024355 for goods and services in the class 9 with priority from December 18, 2018.

The Panel checked the rights on the UK word mark FILEHIPPO No UK00002514818. It appears that this trademark has expired.

The Complainant adds that it is the owner of the domain name <filehippo.com> since its transfer on the basis of Intellectual Property Assignment Agreement concluded on December 10, 2017 with the Company Avast Software s.r.o.

The disputed domain name is:

- <filehippo.digital> created on January 9, 2021

The Complainant contends that the disputed domain name is used by the Respondent for infringing purposes, as hereunder explained.

FACTUAL BACKGROUND

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

The Complainant is holder of the domain name <filehippo.com> created on November 1, 2004 which resolves to a website offering software download services focusing on highest quality freeware. The domain name <filehippo.com> as well as FileHippo software was firstly operated by the company Media Limited which transferred its right to the company Avast Software s.r.o. which transferred FileHippo business to the Complainant on the basis of Intellectual Property Assignment Agreement concluded on December 10, 2017.

The available software has two sections: one that contains a list of most recently updated computer programs and one which lists the most popular downloads.

The computer programs are organized into categories and the Complainant's website contains information about computer programs as well as articles containing recent technology news. The aim of the website is to provide users with the simplest legal method of downloading the newest versions of the best software.

The customers can also download Complainant's software "FileHippo App Manager" which is a great application that keeps computer system up-to-date. It scans a computer for installed applications, checks the versions and then sends this data to FileHippo.com to ascertain if there are any newer releases available. If there are any new releases, these are then neatly displayed in browser window for download.

Its popularity on the market and high quality is supported by the fact that it acquired many awards on websites that compare and evaluate software and applications.

According to the records of SimilarWeb, which tracks the traffic of internet websites, the Complainant's domain filehippo.com is monthly visited by more than 5 million visitors.

This dispute concerns the domain name <filehiippo.digital> registered by the Respondent on January 9, 2021.

It follows that the domain name was registered with the knowledge of all older above-mentioned trademarks of the Complainant. The website under the disputed domain name is supposed to be used by the Respondent as software download site (the purpose of the domain is identical to the purpose of the Complainant's website www.filehippo.com, however unlike the Complainant, the Respondent does not have any license for the distribution of the offered software).

Furthermore, when Internet user wants to download software from the disputed domain name, and types the name of the software to search bar (placed at the top of the disputed domain), he/she is automatically redirected to the Complainant's official website www.filehippo.com. For example, if someone wants to download software Avast from the disputed domain name, he/she is transferred to the website www.filehippo.com from which the software is actually downloaded. The Respondent's knowledge of Complainant's mark and website is therefore evident.

The Respondent placed Complainant's mark and logo on every page of the website available under the disputed domain name. The Respondent's knowledge of Complainant's rights is therefore evident.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Confusing similarity

The Complainant submits that the disputed domain name <filehiippo.digital> is confusingly similar to its FILEHIPPO

trademarks.

The Complainant contends that the only difference is the barely noticeable addition of the letter “i” in the word HIIPPO that could easily result from a common mistake that any Internet user can make when searching for Complainant’s website.

Complainant underlines the high presumption that an ordinary consumer believes that the disputed domain name is owned by the Complainant. Moreover, the disputed domain name completely copies the graphics, design, layout and structure of the Complainant’s website, which contributes to the confusion of the public accessing the website under the disputed domain name.

Right or legitimate interest

The Complainant contends that no evidence suggests that the Respondent has been commonly known amongst consumers by the disputed domain name or by FILEHIPPO trademark.

It asserts that it did not grant any license or authorization to the Respondent.

The use of the Complainant’s logo and trademark, of the color blue which is characteristic for the Complainant’s business under its trademark, gives rise to a false and misleading existence of presumed and direct affiliation with the Complainant. It excludes any possibility of bona fide reference to Complainant’s services or legitimate non-commercial or fair use of the disputed domain name.

Bad faith

The Respondent uses the disputed domain name in bad faith by attempting to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s FILEHIPPO trademark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website.

The Respondent’s registration and use of the disputed domain name indicates that such registration and use was done for the specific purpose of trading on the name and reputation of the Complainant and its FILEHIPPO trademark.

RIGHTS

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has submitted evidence of its prior registered FILEHIPPO trademarks which are protected in several countries worldwide.

The disputed domain name entirely incorporates the Complainant’s FILEHIPPO trademark.

It is well established that the specific top level of a domain such as “.com”, “.org”, “.tv” or “.digital” does not affect the domain name for the purpose of determining the identity or similarity of domain name and a trademark

The addition of the letter “i” between the letters “h” and “i” within the disputed domain name in the following manner “FILEHIIPPO” is hardly noticeable and results in a very minor modification of the Complainant’s trademark. This misspelling could be a common mistake that any Internet user can make when searching for Complainant’s website.

This conduct results from a clear example of typo squatting. In fact, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

The Complainant has, to the satisfaction of the Panel, shown that 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

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

The Respondent did not respond to the Complaint. Consequently, it did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

The Respondent is not related in any way with the Complainant. There is no indication that the Respondent is commonly known by the term "FILEHIPPO", or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent used the disputed domain name to create a false impression of association with the Complainant by using the its logo, trademarks and blue color on every page of the website, which does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name.

In the circumstances of this case, the Panel finds that the Complainant has established a prima facie case of the Respondent's lack of rights or legitimate interests in relation to the disputed domain names, which the Respondent has not rebutted.

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

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of a domain name. It provides that:

"For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Respondent has registered or the respondent has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 the respondent's website or location or of a product or service on the respondent's website or location."

Given the presence of the Complainant's in software download services on the internet through its website <filehippo.com > and the use of the disputed domain name, the Panel finds that the Respondent was well aware of the Complainant's rights in the FILEHIPPO trademarks when it registered the disputed domain name. It constitutes bad faith registration.

The disputed domain name is used to attract and divert internet users by creating a likelihood of confusion with the identical use of the Complainant's trademarks, logo and trade dress as well as structure, layout and design of the Complainant's website. It constitutes bad faith use.

The Panel finds that, according to Par. 4(b) (iv) of the Policy "by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 the respondent's website or location or of a product or service on the respondent's website or location."

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.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain comprises the FILEHIPPO trademarks. The additional "i" between the "h" and "i" of the word HIPPO does not avoid the likelihood of confusion.

The Respondent used the disputed domain name to resolve to a website that copies the graphics, design, layout and structure of the Complainants website, and redirects the internet user to the Complainant's website when it comes to uploading software.

Such a use does not constitute a bona fide offering goods and services or a legitimate non-commercial fair use.

Given the presence of the Complainant's on the internet through its website <filehippo.com> and the use of the disputed domain name, the Panel finds that the Respondent was well aware of the Complainant's rights in the FILEHIPPO trademarks when it registered the disputed domain name. It constitutes bad faith registration.

Its use of the disputed domain name constitutes bad faith use in the meaning of Par. 4(b) (iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **FILEHIIPPO.DIGITAL**: Transferred

PANELLISTS

Name	Marie-Emmanuelle Haas, Avocat
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DATE OF PANEL DECISION	2021-03-22
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Publish the Decision
