

Decision for dispute CAC-UDRP-103638

Case number CAC-UDRP-103638

Time of filing 2021-03-08 00:00:00

Domain names intessanpa.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Intesa Sanpaolo S.p.A.

Complainant representative

Organization Intesa Sanpaolo S.p.A.

Respondent

Name Mohammed Khan

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 owner of the trademarks INTESA SANPAOLO (International Registration No. 920896) and INTESA (International Registration No. 793367) which were registered on March 7, 2007 and September 4, 2002 respectively.

The Complainant also holds numerous domain name registrations which contain the INTESA SANPAOLO and INTESA trademarks, such as but not limited to, <intesasanpaolo.com>, <intesasanpaulo.org>, <intesa-sanpaolo.com>, <intesa-sanpaolo.org>, <intesa.com> and <intesa.info>. The Complainant's domain names are all connected to its official website: <http://www.intesasanpaolo.com>.

FACTUAL BACKGROUND

The Complainant, Intesa Sanpaolo S.p.A., was established in 2007 through a merger of two Italian banking groups, Banca Intesa S.p.A. and Sanpaolo IMI S.p.A. The Complainant is a leading Italian banking group with market capitalization exceeding 41.5 billion euro. The Complainant has a wide network throughout Italy with more than 21% of market shares and a client base of approximately 14.7 million customers. The Complainant has a strong presence in Central-Eastern Europe with a network of approximately 1,000 branches and over 7.1 million customers.

The disputed domain name, <intessanpa.com>, was registered on February 10, 2021 which resolved to a webpage which appeared to impersonate the Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain names are confusingly similar to the INTESA SANPAOLO and INTESA marks on the basis that the disputed domain name is almost identical to INTESA SANPAOLO with the omission of the letter "A" in "INTESA" and the letters, "O", "L" and "O" in "SANPAOLO" are insufficient to avoid the finding that the disputed domain name is confusingly similar to its INTESA SANPAOLO and INTESA marks.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. In addition, the Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the INTESA SANPAOLO and INTESA marks.

The Complainant further asserts that the disputed domain names have been registered and are being used in bad faith as the Respondent should have known of the Complainant's INTESA SANPAOLO and INTESA marks at the time of registration of the disputed domain name. The Complainant also asserts that the Respondent is attempting to attract, for commercial gain, Internet users to the Respondent's website, 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 of a product or service on the Respondent's website.

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 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. Identical or Confusingly Similar

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

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the INTESA SANPAOLO and INTESA registered trade marks. The differences between the disputed domain name and the Complainant's marks rest in the omission of letters, such as the letter "A" in "INTESA" and the letters, "O", "L" and "O" in "SANPAOLO" and a generic Top-Level Domain ("TLD") ".com".

It is established that 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. (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.9). It is evident from the evidence before the Panel that the omissions of the letters in the disputed domain name is intentional designed to lead Internet users to confuse the disputed domain name with the Complainant's marks. It is also established that gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (WIPO Overview 3.0, section 1.11). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.* WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L'Oréal v Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.* WIPO Case No. D2009-0877).

The disputed domain names consist of the Complainant's marks and the omission of the letter "A" in "INTESA" and the letters, "O", "L" and "O" in "SANPAOLO" and a gTLD ".com" which in the Panel's view does not avoid confusing similarity with the Complainant's trademark (see *Schneider Electric S.A. v. Domain Whois Protect Service / Cyber Domain Services Pvt. Ltd.*, WIPO Case No. D2015-2333; WIPO Overview 3.0, section 1.9).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the INTESA SANPAOLO mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests. The Complainant submitted evidence that it did not authorize or license the Respondent to use the INTESA SANPAOLO and INTESA marks (See *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. D2015-1149; *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735). In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain name.

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant's prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain name resolved to an active webpage which appeared to impersonate the Complainant as it featured the Complainant's trademarks and offered financial services. The test to apply to determine bad faith is that of the totality of circumstances. In doing so we must look to: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

In this case, the evidence shows that the Complainant's mark is distinctive and has attained significant reputation. The strong reputation and distinctive character of the Complainant's mark is evidence that the Respondent is unlikely to have registered the disputed domain name without sight and knowledge of the Complainant's marks and it is implausible that there is any good faith use to which the disputed domain name may be put to.

It is also the Complainant's evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's mark as the Respondent's name has no connection with the Complainant's INTESA SANPAOLO and INTESA marks which were registered long ago. This is another indicator of bad faith on the part of the Respondent (see *Boursorama SA v. Estrade Nicolas*, WIPO Case No. D2017-1463).

The evidence submitted by the Complainant also shows that the disputed domain name used to resolve to an active website attempting to impersonate the Complainant and seeking Internet users to enter their account numbers. The Complainant argues that such use of the disputed domain name amounted to illegal phishing use by the Respondent in his attempt to attract unsuspecting Internet users for commercial gain. It is well-established that the use of a domain name for per se illegitimate activity such as phishing is manifestly considered evidence of bad faith.

The Panel also notes that the Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith. The Complainant also submitted evidence that they had issued a cease-and-desist letter to the Respondent prior to the proceedings. The Respondent failed to respond.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's marks, the fact that the disputed domain name resolved to a phishing page, the fact that no Response was submitted by the Respondent in response to the Complainant's cease-and-desist letter and to the Complaint, and that it is implausible that the Respondent could put the disputed domain name to any good faith use, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **INTESSANPA.COM**: Transferred

PANELLISTS

Name	Mr. Jonathan Agmon
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DATE OF PANEL DECISION 2021-04-08

Publish the Decision
