Decision for dispute CAC-UDRP-103650

Case number	**CAC-UDRP-103650**
Time of filing	**2021-03-16 10:06:32**
Domain names	**u-music.org**

Case administrator

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

Complainant

Organization	**UMG Recordings, Inc.**
Organization	**Universal Music Group Holdings, Inc.**

Complainant representative

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

Respondent

Name	**Paul Jonah**

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 UMG Recordings, Inc. is the proprietor of US trademarks No. 6,158,412, 6,158,413 and 6,158,414 UMUSIC EXPERIENCE, and is the registrant of the domain name <umusic.com>.

FACTUAL BACKGROUND

Universal Music Group (UMG) is group of companies active in the field of music-based entertainment. UMG identifies and develops artists and produces and distributes music around the world. The Complainant uses <umusic.com> in connection with its business, which is a known-abbreviation for 'Universal Music'. The domain name was registered in 1997 (see CAC Case No. 102687), and points to the Complainant's homepage at www.universalmusic.com.

The disputed domain name was created in February 2021 and is being used for a pay-per-click 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

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

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According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The disputed domain name is confusingly similar to the Complainant's Trademarks and domain. The evidence provided by the Complainant is just sufficient for such a finding, which is based on the settled practice in evaluating the existence of a likelihood of confusion of:

a) disregarding the top-level suffix in the domain name (i.e. ".org"), and

b) not finding that the addition of a hyphen between two parts of the word ("u-music") would be sufficient to distinguish a domain name from a trademark or another domain name, and

c) not finding that generic parts of trademarks such as the word "experience" are of such weight in the comparison that they make it possible to find that there is no likelihood of confusion.

Therefore, the Panel comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the

Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Complainant seems to have put forward that the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. Nor has the Respondent been granted an authorization or license to use the disputed domain name by the Complainant. While this could have been more lucid, it has not been contested by the Respondent. Instead, the Respondent failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain name. The screenshot provided by the Complainant as one of the annexes and entitled “Complainant’s Website” is in fact a screenshot of the Respondent’s website under the disputed domain name <u-music.org>, which shows that the disputed domain name is being used for a pay-per-click website.

Given the reputation of the Complainant and its trademarks and domain name as supported to some extent by the Complainant’s evidence, the Panel must conclude that the Respondent was fully aware of the Complainant's trademarks and domain name "UMUSIC" at the time of registering the disputed domain name <U-MUSIC.ORG>. Therefore, it has been established to the satisfaction of the Panel that the disputed domain name was registered and is being used (at least passively) in bad faith, in order to prevent the Complainant from making proper use of the mark in the disputed domain name.

Therefore, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement 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. **U-MUSIC.ORG**: Transferred

PANELLISTS

Name	**Udo Pfleghar**

2021-04-21

DATE OF PANEL DECISION 2021-04-21

Publish the Decision