Decision for dispute CAC-UDRP-103505

Case number	CAC-UDRP-103505
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Domain names	linkon.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	ASDA Trade Ltd

Respondent

Organization	NAMEFIND CAYMAN ISLANDS LTD.

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 holder of registered US trademark No. 5471450 LinkOn, filed on 10 August 2017 and registered on 15 May 2018 for various goods in international class 09. The mark was published on 2 January 2018.

FACTUAL BACKGROUND

The disputed domain name <linkon.com> was registered on 24 January 2001. Ownership in the domain changed several times prior to the filing and registration of the Complainant's trademark and once after the date of registration on 20 February 2020, when it was assigned to the Respondent.

The Complainant's trademark No. 5471450 LinkOn was filed in the USA in 2017 and registered on 15 May 2018. This is not disputed by the parties.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant puts forward that it was founded in 2017 and has been developing own branded products such as Cables, Power Banks, Car Chargers and Travel Wall Chargers for smartphones, tablets and laptops under the mark "LinkOn" in many countries around the world including the USA, UK, Germany, France, Spain, Italy, Netherlands, Sweden, Poland, Bulgaria, Romania, Japan, Singapore. The Complainant further states that first registered online sales took place in June 2017 under the trade mark LinkOn which was registered in United States.

The Complainant claims that the disputed domain name <linkon.com> is registered and held by the current owner with the aim of selling to a company which needs it. The Complainant points to email correspondence and prices quoted for the domain which started at US$ 75,000.00 and are now at US$ 39,999.00.

The Complainant goes on to argue that the disputed domain name is being held by the current owner without rights in the name and with no plans to use it other than for resale of the disputed domain name at a higher price in order to make a profit. The Complainant puts forward that it owns the trade mark "LinkOn" in the USA and wishes to use the domain "linkon.com" for its own site. The Complainant points out that the domain owner was initially a company called Uniregistry which was acquired by company GoDaddy which is the current owner of the contested domain name.
The Complainant would like to take ownership of the domain and to continue paying the monthly domain fees for the registration of the domain. However, the Complainant believes that the price of US$ 39,999.00 being asked as a purchase price for the transfer of the ownership of the disputed domain name is illegal and should not be paid to the current domain owner. The Complainant therefore concludes that the current domain owner is keeping the domain in bad faith.

RESPONDENT:

The Respondent puts forward that the Complainant admits that its trademark postdates the registration of the disputed domain name by many years. The Respondent further argues that merely offering a domain name for sale is not evidence of cybersquatting and registration in bad faith could not have occurred in the absence of a trademark registration. The Respondent further goes on to question the Complainant's standing and requests that the Complainant be sanctioned with a finding of reverse domain hijacking.

The Respondent further puts forward that speculating in intrinsically valuable domain names represents a legitimate business interest in itself, unless the evidence points instead to a disguised intent to exploit another party’s trademark, and argues that the latter is not the case as the date of registration of the disputed domain name precedes that of the trademark. Finally, the Respondent denies registration and use of the disputed domain name in bad faith and argues that the actions of the Complainant represent a classic "Plan B" option to attempt to secure the disputed domain name by means of UDRP proceedings in place of a purchase of the domain name which should be sanctioned with a finding of reverse domain name hijacking.

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 Panel has not adjudicated the question whether the Complainant has 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 not shown, to the satisfaction of the Panel, that 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. PROCEDURAL MATTERS

1. Supplemental Submissions

The first issue to be discussed is the Panel's decision to accept neither the Complainant's, nor the Respondent's unsolicited supplemental submissions. In general, the UDRP makes no provisions for unsolicited filings by either party. While there are occasions when a Panel may request or accept additional filings, the Panel did not do so here.

With respect to unsolicited filings, this Panel shares the view expressed in Gordon Sumner, p/k/a Sting v. Michael Urvan, WIPO Case No. D2000-0596 and Wipro Enterprises Private Limited ("WIPRO") v. Domain Privacy Service fbo Registrant / Ankur Aggarwal, Piron, WIPO Case No. D2017-0181, <wiprofurniture.com>, that unsolicited submissions will be considered only in exceptional circumstances, and only when the party filing the unsolicited submission explains the exceptional circumstances and why the material could not have been submitted with the Complaint.

The Complainant has not argued or substantiated the existence of exceptional circumstances in this case. Consequently, the Panel did not consider Complainant's supplemental filing nor Respondent's additional response.

2. Standing

Contrary to what is alleged by the Respondent, where the Complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. The Panel holds that this is the case.

B. ON THE MERITS

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:

1. Rights of the Complainant

The disputed domain name is confusingly similar to the Complainant's registered trademark. This finding is based on the well-established practice of disregarding the top-level suffix in the domain name (i.e. ".COM") in evaluating the existence of a likelihood of confusion. The dominant and distinctive element of the disputed domain name <LINKON.COM> is identical to the registered trademark LinkOn of the Complainant.

The Panel therefore concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the UDRP.

2. Lack of Rights or Legitimate Interests of the Respondent

In view of the Panel's decision regarding bad faith registration, the Panel has not decided this issue.

3. Registration and Use in Bad Faith

The Complainant is required to prove under paragraph 4(a)(iii) of the Policy that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four alternative circumstances, without limitation, that shall be evidence of the registration and use of a domain name in bad faith by a respondent:

(i) circumstances indicating that [the Respondent] [has] registered or [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 your 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 [its] 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 alleges bad faith primarily under paragraph 4(b)(i) of the Policy.

The Respondent plainly states its business as trading in domain names. Whereas previous decisions under the Policy are not binding, panels nevertheless strive for consistency in the application of the Policy. As many decisions have reaffirmed, trading in domain names is not, in and of itself, illegitimate. For example, the decision in PJS International SA v. Vertical Axis Inc. / Whois Privacy Services Pty Ltd., (WIPO Case No. D2013-0805) said: "There is no evidence that the [then] Respondent acted in bad faith when it registered the disputed domain name, among the several thousand domain names that it claims to own. The mere fact of registering a large number of domain names is not proof by itself of bad faith, as there may exist a legitimate purpose in appropriating many domain names in the hope that some of them will enjoy commercial value. The situation is similar to that of the acquirer of many mining rights or oil concessions in the hope that some of them will be really worthy of development. As the [then] Complainant has not shown that its trademark was established (on a registered or unregistered basis) before the registration of the disputed domain name in 2003, the Panel cannot find bad faith registration on the part of the Respondent".

Domain names are traded on an open market. Purchase and sale prices are agreed between buyer and seller. It is not a function of the Policy to interfere in such transactions except under the strict terms of the Policy itself. Absent registration and use of a domain name in bad faith, such as the targeting of trademark holders, a respondent may monetise its stock of domain names by way of advertising and may set the asking prices for them. As stated by the three member panel in Informa Business Information, Inc. v. Privacydotlink Customer 640040 / Domain Manager, Web D.G. Ltd., WIPO Case No. D2017-1756, in which the then complainant held a registered trademark for "THE PINK SHEET" and the domain name contested was <pinksheet.com>: "There is nothing in the record to suggest that the [then] Respondent, a domain name broker, competes in business with the [then] Complainant, or that it has sought to trade off goodwill attaching to the Complainant's trademark. Since acquisition by the Respondent or its associated group entities, the disputed domain name appears to have resolved to a place keeper site that features an invitation to purchase the disputed domain name. As the Respondent is in the business of domain name broking, this is hardly surprising. Neither is the fact that the Respondent requested a purchase price of USD 100,000 following the Complainant's unsolicited enquiry of it in August 2017. As in any market for commodities, domain name broking is about matching supply with demand; in the absence of any indicia of bad faith, there is nothing wrong per se with what the Complainant characterises as an 'excessive offer'".

The holding of the disputed domain name for sale by the Respondent is therefore not held to be registration or use in bad faith.

The question could also be whether the transfer of a domain name registration from a third party to the respondent (be it a single domain name or as part of a portfolio) leads the panel to a finding of bad faith in its assessment of the matter.

In cases where the domain name registration is masked by a privacy or proxy service and the complainant credibly alleges that a relevant change in registration has occurred, it would be incumbent on the respondent to provide satisfactory evidence of an unbroken chain of registration. However, the arguments and information brought forward by the Complainant in the Complaint do not provide sufficient grounds for the Panel to hold that this is such a case. The Complainant merely states that the "The domain owner was initially a company called Uniregistry which then was acquired by company GoDaddy. The current domain owner is company GoDaddy."

This is not sufficient information to examine the issue of Bad Faith due to the time of acquisition of the domain name by the Respondent on the basis of the Complaint. Whatever additional information could be provided by the Complainant was available at the time of filing the Complaint and should therefore have been put before the Panel with that Complaint. As stated above, there are no exceptional circumstances put forward by the Complainant showing that there was good cause to submit such information at a later stage.

Information about a transfer of ownership was instead provided by the Respondent in an Annex to the Response. However, this information allowed no conclusions to be drawn about the transfer itself which had not been put forward as an argument for bad faith by the Complainant in the Complaint. The mere information itself does not allow the conclusion that the registrant acquired the disputed domain name in bad faith. For this to be established, there would need to be further accompanying facts which could typically include a change in the content of the website to which a domain name directs to take advantage of the complainant's mark or unsolicited attempts to sell the domain name to the complainant only following such asserted change in registrant.

This is not the case. Instead, the email correspondence filed by the Complainant with the Complaint is a response from the Respondent to an offer made by the Complainant for the purchase of the disputed domain name. It therefore appears as though it was the Complainant who approached the Respondent to purchase the disputed domain name. The fact that the Respondent has repeatedly contacted the Complainant after this initial contact offering the disputed domain name for sale is not per se an indication of bad faith.

Therefore, the Panel does not find evidence, on balance, that the Respondent targeted the Complainant or has registered and used the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy.

4. Reverse Domain Name Hijacking (RDNH)

The Respondent requests a finding of RDNH. Paragraph 15(e) of the UDRP Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding".

RDNH is furthermore defined under the UDRP Rules as "using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name." Panels have also referred to paragraphs 3(b)(xiii) and (xiv) of the UDRP Rules in addressing possible RDNH scenarios.

Panels have consistently found that the mere lack of success of a complaint is not itself sufficient for a finding of RDNH. Reasons articulated by panels for finding RDNH include: (i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as the complainant's lack of relevant trademark rights, clear knowledge of respondent rights or legitimate interests, or clear knowledge of a lack of respondent bad faith.

None of these elements are given here. The Complainant is the proprietor of a registered trademark and has standing in

these proceedings. There is no evidence that the Complainant could have had knowledge of potential rights or legitimate interests of the Respondent or of a lack of bad faith. In order to grant the request, more would be required. The Panel is not persuaded that the Complaint was insincere or malicious or warrants a finding of RDNH.

C. CONCLUSION

For all the above reasons, the Complainant's Complaint is denied. The Respondent's request that the Panel finds that this is a case of Reverse Domain Name Hijacking is also denied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

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

PANELLISTS

Name	**Udo Pfleghar, B.A. , Assen Alexiev, The Hon. Neil Brown, QC**

DATE OF PANEL DECISION 2021-04-25

Publish the Decision