Decision for dispute CAC-UDRP-103717

Case number	CAC-UDRP-103717
Time of filing	2021-04-07 17:29:04
Domain names	leetchicash.com

Case administrator

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

Complainant

Organization	LEETCHI

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	GNAME.COM PTE. 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 various trademarks including the following:

- LEETCHI, EU word mark registration No. 015451891, registered on September 14, 2016 in classes 9, 35, 36, 38 and 42.

FACTUAL BACKGROUND

The Complainant, Leetchi, operates an online money pot website through the domain name <leetchi.com> and currently counts 12 million users. The Complainant proposes a fast, easy and secure way for people to raise money for group gifts, common expenses and causes.

The disputed domain name <leetchicash.com> has been registered on March 14, 2021 by the Respondent. The disputed domain name redirected to a login page for a lottery platform.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been authorized to register or use the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks. The Complainant further contends that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

2. The respondent has no rights or legitimate interests in respect of the domain name; and

3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity or confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered LEETCHI mark which is used in connection with its online money pot business, it is established that there are trademarks in which the Complainant has rights.

The disputed domain name <leetchicash.com> incorporates the Complainant's LEETCHI trademark in its entirety, merely adding the descriptive term "cash". In these circumstances, the Panel finds that the confusing similarity is obvious.

It is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel observes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "GNAME.COM PTE. LTD.". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Generally speaking, UDRP panels have found that where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 WIPO Overview 3.0). In this case, the disputed domain name incorporates the Complainant's LEETCHI trademark in its entirety, merely adding the descriptive term "cash", which can be directly linked to the Complainant's financial services. Therefore, the Panel finds that the disputed domain name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the WIPO Overview 3.0).

The disputed domain name redirected to a login page for a lottery platform. In the Panel's view, this does not amount to a

legitimate noncommercial or fair use of the disputed domain name (see Novartis AG v. liubo shi, liu bo shi, WIPO Case No. D2019-2122: “To the contrary, the redirection of the disputed domain name to a webpage where Internet users are requested to sign up for a commercial gambling platform, shows the Respondent’s intention to misleadingly divert consumers for commercial gain, by taking unfair advantage of the goodwill and reputation of the Complainant’s trademarks for RITALIN. The Panel therefore considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply.”).

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the Respondent’s awareness of the Complainant and/or the Complainant’s trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070).

Given the distinctiveness of the Complainant’s LEETCHI trademark, the Panel finds it more likely than not that the Respondent was aware of the Complainant’s rights at the moment it registered the disputed domain name. Moreover, the combination of the Complainant’s trademark with the term “cash” in the disputed domain name is a further indication of the Respondent’s knowledge of the Complainant’s financial services.

UDRP panels have found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant’s mark:

- seeking to cause confusion for the respondent’s commercial benefit, even if unsuccessful;

- the lack of a respondent’s own rights to or legitimate interests in a domain name;

- absence of any conceivable good faith use (see section 3.1.4 WIPO Overview 3.0).

In the present case, the Panel finds that the use of the Complainant’s LEETCHI mark to redirect to a login page for a lottery platform indicates an intention to cause confusion for the Respondent’s commercial benefit. The uncontested lack of the Respondent’s own rights to or legitimate interests in the disputed domain name has already been mentioned above. Finally, given the distinctive character of the Complainant’s mark, the Panel finds it difficult to conceive any plausible good faith use of the disputed domain name by the Respondent in the future.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown 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. **LEETCHICASH.COM**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2021-05-12

Publish the Decision