

Decision for dispute CAC-UDRP-103762

Case number	CAC-UDRP-103762
Time of filing	2021-05-03 09:50:44
Domain names	INTESAGROUP.INFO

Case administrator

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

Complainant

Organization	Intesa Sanpaolo S.p.A.
--------------	------------------------

Complainant representative

Organization	Intesa Sanpaolo S.p.A.
--------------	------------------------

Respondent

Name	Maria Delhorny
------	----------------

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 proprietor of a range of relevant trade marks. For instance, it holds the mark 'INTESA' as an EUTM (012247979), granted in 2014 and of continuing validity, in a number of classes (including financial affairs). Of further relevance to the present dispute is its mark 'GRUPPO INTESA' (EUTM, 000779827, granted in 1999 and duly renewed).

FACTUAL BACKGROUND

The Complainant, a financial services business with its seat in Turin, Italy, took on its present form in 2007 after a merger. As well as its primary operations in Italy, it is active in various EU member states and European states, and in selected other jurisdictions. Its activities include retail and corporate banking. In this context, it also operates its own website at the domain name <INTESASANPAOLO.COM>, and holds various other domain names (which are used to redirect users to the aforementioned website), such as <INTESA.COM> and <GRUPPOINTESA.COM>.

The Respondent, an individual with an address in Belluno, Italy, registered the disputed domain name on 11 May 2020.

PARTIES CONTENTIONS

No administratively compliant response has been filed. Neither the written notice of the Complaint nor the advice of delivery thereof was returned to the provider, and so it is not known whether written notice was received by the Respondent or not. One e-mail sent to the details provided by the Respondent was successfully relayed; the Respondent never accessed the online platform.

The Complainant, whose arguments are summarised in the paragraphs below, submits that all aspects of the Policy have been met and that the disputed domain name should be transferred to it. Relevant evidence is annexed to the Complaint, and the Complainant also notes and has supplied a copy of a letter sent to (but unanswered by) the respondent, asking for voluntary transfer of the disputed domain name, on 12 October 2020.

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).

There are a number of ways in which confusing similarity is present (disregarding the gTLD .INFO in accordance with established practice).

The first is that the disputed domain name consists of the Complainant's mark 'INTESA' and the generic term 'GROUP'; as set out in the WIPO Jurisprudential Overview, version 3.0, para 1.8, it is well established that the addition of a generic or descriptive term to that term in which a Complainant has rights is unlikely to be a barrier to a finding of confusing similarity.

The second is that the Complainant also has rights in the mark 'GRUPPO INTESA', which translates to English (the language of registration of the disputed domain name) as 'INTESA GROUP'. It is also well established that a translation of a trade mark can satisfy the standard for confusing similarity, though there may be good arguments available to a Respondent under the second or third aspects of para. 4(a) of the Policy where this arises. See for instance WIPO AMC Case No. D2014-0870 Happy Pancake AB v. Registration Private, Domains By Proxy, LLC / Fredrik Johansson, concerning the mark HAPPY PANCAKE (English) and a domain name containing the text 'glada pannkakan' (Swedish); see further WIPO Jurisprudential Overview, version 3.0, para 1.14.

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).

The Complainant declares that the Respondent has not been authorised or licensed to use any of its marks, submitting that no rights or legitimate interests exist. The Respondent has not participated in these proceedings, and so cannot assist the Panel in challenging this prima facie case of the absence of such. Indeed, there is no basis on which the Panel could find rights or legitimate interests in respect of the disputed domain name, and there is no relevant content at a website, or other use brought to the Panel's attention, that could support such an assumption. The Panel notes that the Respondent is known as 'Maria Delhorny' and has supplied an e-mail address that includes the term 'INTESA', but has failed to present any information that would explain this course of action, let alone allow the Panel to depart from the prima facie case established by the Complainant.

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).

Appropriate evidence of the well-known nature of the Complainant and its marks has been presented, without any contradiction from the Respondent (who has supplied an address in Italy, the centre of the Complainant's activities, and so is even more likely to be well aware of the Complainant). It is more likely than not that the disputed domain name would not have been registered if it were not for Complainant's trademark.

The website available at the disputed domain name has, at the time of the filing of the Complaint, contained 'sponsored' links

pointing towards financial and other services. One screenshot brought to the Panel's attention included the disclaimer text 'The Sponsored Listings displayed above are served automatically by a third party' and noting that the 'domain owner' does not 'maintain any relationship with the advertisers'. For the purposes of the Policy, however, activity of this nature is highly relevant to the assessment of a Complaint, notwithstanding a standard-form disclaimer of this nature.

The Complainant contends that this is a dispute within the scope of para 4(b)(iv) of the Policy, which is one of the non-exhaustive examples of registration and use in bad faith. The Complainant submits, echoing the Policy itself and in light of the comprehensive evidence supplied, that the disputed domain name is not used for any bona fide offerings, and that, by using the domain name, the Respondent is intentionally attempting to attract, for commercial gain, Internet users to their web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of said website. In making this argument, the Complainant rightly recalls the close parallels between the disputed domain name and the Complainant's marks.

In finding registration and use in bad faith, the Panel also places due weight upon the Respondent's unexplained use of an e-mail address in which the name and mark of the Complainant is incorporated, the use of a privacy / proxy service in respect of the registration of the disputed domain name, and the lack of any response to the letter sent by the Complainant's legal representatives to the respondent on 12 October 2020. On the other hand, the Panel places little weight on the list of disputes at the WIPO AMC (presented without further commentary), supplied as an Annex to the Complaint, in which the Complainant has been involved. This Panel is required to examine the merits of the present Complaint in terms of the Policy, and there has been no evidence presented that would suggest any link between the Respondent in this case and these many other cases.

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.

The Panel notes that the CAC informed the Complainant, in a Non-Standard Communication of 5 May 2021 that the disputed domain name would expire while these proceedings were active.

The Registrar Accreditation Agreement provides as follows (at article 3.7.5.7):

In the event that a domain which is the subject of a UDRP dispute is deleted or expires during the course of the dispute, the complainant in the UDRP dispute will have the option to renew or restore the name under the same commercial terms as the registrant. If the complainant renews or restores the name, the name will be placed in Registrar HOLD and Registrar LOCK status, the WHOIS contact information for the registrant will be removed, and the WHOIS entry will indicate that the name is subject to dispute. If the complaint is terminated, or the UDRP dispute finds against the complainant, the name will be deleted within 45 days. The registrant retains the right under the existing redemption grace period provisions to recover the name at any time during the Redemption Grace Period, and retains the right to renew the name before it is deleted.

PRINCIPAL REASONS FOR THE DECISION

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of trade marks including INTESA and GRUPPO INTESA, and that the addition of the text 'GROUP' does not prevent a finding of confusing similarity with the INTESA mark (or, in the alternative, the disputed domain name is confusingly similar to the GRUPPO INTESA mark being a direct translation of it). It is accepted that the Respondent would have been aware of the Complainant, and that the disputed domain name is being used to serve sponsored links, with no clarity on the part of the Respondent as to its activities or its relationship with the Complainant. The Panel can find for these reasons that the disputed domain name was registered and is being operated in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the UDRP have therefore been met, and the Panel ordered that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **INTESAGROUP.INFO**: Transferred
-

PANELLISTS

Name	Dr Daithi Mac Sithigh
------	------------------------------

DATE OF PANEL DECISION	2021-05-31
------------------------	------------

Publish the Decision
