

Decision for dispute CAC-UDRP-103783

Case number CAC-UDRP-103783

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Domain names customwritlngs.com

Case administrator

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

Complainant

Organization One Freelance Limited

Respondent

Name Vika Korotkova

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 a registered owner of the following trademark containing a word element "CUSTOMWRITINGS.COM":

(i) CUSTOMWRITINGS.COM (word), US Trademark, priority (filing) date 01 August 2018, registration date 14 May 2019, trademark registration no. 5749163, registered for services in the international class 41;

(referred to as "Complainant's trademark").

Also, the Complainant is the owner of the domain name <customwritngs.com> registered in October 2005.

FACTUAL BACKGROUND

The Complainant, One Freelance Limited, provides through its website available under the domain name <customwritings.com> services consisting primarily of on-line custom essay writing.

The disputed domain name <customwritlngs.com> was registered on 23 December 2019 and is held by the Respondent.

The disputed domain name website (i.e. website available under internet address containing the disputed domain name) is currently used by the Respondent for promoting and offering services similar to those of the Complainant, i.e. tutoring on essay writing.

The Complainant seeks transfer of the disputed domain name to Complainant.

PARTIES CONTENTIONS

The Parties' contentions are the following:

COMPLAINANT:

CONFUSING SIMILARITY

The Complainant states that:

- The "CUSTOMWRITINGS.COM" has acquired distinctiveness and reputation through long public use since 2006 and it has acquired secondary meaning attributable to the Complainant.
- Complainant's rights to Complainant's trademark predates registration of the disputed domain name.
- Disputed domain name incorporates Complainant's trademark <CUSTOMWRITINGS.COM> with some minor changes such as the replacement of the second letter "i" with the letter "l" to create a confusingly similar word "CUSTOMWRITINGS".
- The Complainant refers to previous domain name decisions in this regard.

Thus, according to the Complainant, the confusing similarity between Complainant's trademarks and the disputed domain name is clearly established.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain name.
- The Complainant has not authorized, permitted or licensed the Respondent to use Complainant's trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by the disputed domain name.
- On the contrary, the disputed domain name is being used for attracting internet users to services provided by the Respondent and this is why it is free-riding on the reputation of the Complainant's trademark and its business.
- The Complainant refers to previous domain name decisions in this regard.

BAD FAITH REGISTRATION AND USE

The Complainant states that:

- Seniority of the Complainant's trademark predates the disputed domain name registration.
- The disputed domain name was used for attracting internet users to services provided by the Respondent, which are similar to those provided by Complainant, and therefore it is free-riding on the reputation of the Complainant's trademark and its business.
- Respondent's registration of the disputed domain name constitutes "typosquatting" when the spelling of an existing trademark has been minimally changed by the substitution of a similar-looking letter.
- The Complainant refers to previous domain name decisions in this regard.

The Complainant presents the following evidence which has been assessed by the Panel:

- Information about the Complainant and its business, its history and reviews concerning the services provided by the Complainant;
- Excerpt from trademark database;
- Excerpt from WHOIS database regarding disputed domain name;
- Screenshots of relevant websites;
- Copy of Complainant's correspondence to the Respondent concerning infringement of Complainant's trademark rights

RESPONDENT:

The Respondent has not provided any response to the complaint.

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

RIGHTS

Since the domain name and the Complainant's trademark are not identical, the key element investigated and considered by the Panel is whether the disputed domain name consisting of a term "CUSTOMWRITLNGS.COM" is confusingly similar to the Complainant's trademarks.

The disputed domain name and the Complainant's trademark are very similar since they differ in a mere misspelled version of a generic term "writings" in which a letter "l" was replaced with "L". Moreover, a letter "L" in small letters (lower case) appears as "l" which, in a turn, looks identical to a letter "i" in capital letters (i.e. "I").

This cannot prevent the association in the eyes of internet consumers between the disputed domain names and the Complainant's trademarks and thus the likelihood of confusion still exists. A misspelled non-distinctive term "writings" cannot sufficiently distinguish the disputed domain name from the Complainant's trademark.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity and confusing similarity tests, as it is a necessary technical requirement of registration.

Therefore, the Panel has decided that there is identity in this case, it also concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant's assertions that the Respondent is not commonly known by either disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

Although, it may appear that the disputed domain name has been genuinely used for promoting tutoring services, the Panel has investigated the disputed domain name website in more detail and observed that it is likely a fake, not a genuine website. All references and tutor profiles are fake – as they use photos (likely without any permission) of completely different people from various social networks (e.g. LinkedIn), the services on a disputed domain name are presented in the name of the Complainant (not in a name of a Respondent) and online forms are not working.

Therefore, in the absence of the Respondent's response, the Panel concludes that there is no indication that the domain name was intended to be used in connection with a bona fide offering of goods or services as required by UDRP.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a) (ii) of Policy).

BAD FAITH

It is clear that by replacing a letter "I" with "L" in a word element WRITING while all other characters of the disputed domain name are identical to the Complainant trademark, it was Respondent's intention to target Internet users who incorrectly type a website address into their web browser, an illicit activity recognised as „typosquatting“. There are several different reasons for typosquatting, as for example:

- to try to sell the disputed domain back to the Complainant;
- to monetize the disputed domain through advertising revenues from direct navigation misspellings of the intended domain;
- to redirect the typo-traffic to Complainant's competitor;
- as a phishing scheme to mimic the Complainant's site, while intercepting passwords or other information which the visitor enters unsuspectingly;
- to install drive-by malware or revenue-generating adware onto the visitors' devices;
- to harvest misaddressed e-mail messages mistakenly sent to the typo domain.

All of the activities above are considered as malicious activities.

For the reasons described above, since (i) there is only a remote chance that the Respondent has registered the disputed domain name just by a chance and without having knowledge about the existence of the Complainant's rights and business (ii) there is no legitimate use of the disputed domain name because the disputed domain name website appears to be fake and (iii) the Respondent is engaged in typosquatting, the Panel contends, on the balance of probabilities, that the disputed domain name has been registered and is being used by the Respondent in bad faith.

Thus, the Panel has taken a view 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).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. CUSTOMWRITLNGS.COM: Transferred

PANELLISTS

Name JUDr. Jiří Čermák

DATE OF PANEL DECISION 2021-07-06

Publish the Decision
