

Decision for dispute CAC-UDRP-103723

Case number CAC-UDRP-103723

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Domain names wwwhidemyass.com

Case administrator

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

Complainant

Organization Privax Limited

Complainant representative

Name Rudolf Leška

Respondent

Name Zhenhua Bin

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending and which relate to the disputed domain name.

The Panel is aware of CAC case 103647, decided on May 20, 2021, which relates to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registrant of the following trademark registrations:

- UK word trademark "HIDE MY ASS" No. UK00002593092, registered on February 10, 2012, for goods and services in classes 9, 38 and 42;
- UK figurative trademark "HIDE MY ASS" No. UK00002593017, registered on February 17, 2012, for goods and services in classes 9, 38 and 42;
- EU word trademark "HIDE MY ASS" No. 010786754, registered on October 3, 2012, for goods and services in classes 9, 38 and 42;
- US word trademark "HIDE MY ASS" No. 4363234, registered on July 9, 2013, for goods and services in classes 9, 38, 42 and 45;
- AU word trademark "HIDE MY ASS" No. 1626764, registered on January 9, 2014, for goods and services in classes 9, 38 and 42;
- International word trademark "HIDE MY ASS" No. 1204967, registered on January 9, 2014, for goods and services in

classes 9, 38 and 42;

- CA word trademark "HIDE MY ASS" No. TMA969519, registered on April 29, 2014, for goods and services in classes 9, 35, 38 and 42.

The disputed domain name was registered by the Respondent on March 14, 2019.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a global leader in the VPN (virtual private network) and privacy space.

With the availability of more than 1070 servers and more than 290 countries, HideMyAss is the biggest VPN service available today. HideMyAss was created in 2005. HideMyAss has more than 10 million subscribers (and more than 400 million users) from all over the world.

The Complainant is the owner of several registrations for the trademark "HIDE MY ASS".

The Complainant distributes its products, among others, via its website www.hidemypass.com where the general public can find service information, support and can buy VPN service.

The disputed domain name was registered with the knowledge of the Complainant's trademarks. The Respondent uses the disputed domain name to automatically redirect internet users to the Complainant's website with the sole illicit purpose to commercialise such redirecting of traffic.

The disputed domain name is identical to the Complainant's "HIDE MY ASS" trademarks.

The Respondent has no rights or legitimate interests in respect of the disputed domain name, which has been registered and is being used in bad faith.

The wording "HIDE MY ASS" constitutes the Complainant's family of marks. Due to the large number of users of HideMyAss VPN, the Complainant's trademarks are highly distinctive and the "HIDE MY ASS" trademark is a globally known brand with good reputation.

The Complainant's HideMyAss page on Facebook has more than 59.200 followers. Furthermore, the Complainant's website www.hidemypass.com is visited by approximately 2,11 million Internet users per month.

The Complainant's name and trademark "Hide My Ass" is entirely reproduced in the disputed domain name.

The only difference between the disputed domain name and the Complainant's domain name is the lack of a dot between the prefix "www" and the trademark "hidemypass". The omission of a dot is a common mistake that any internet user can make when searching for the Complainant's website. The Respondent's use of the disputed domain name is a clear example of typosquatting.

It is well established that the specific top level domain is not relevant for the purpose of determining whether a domain name and a trademark are identical.

The disputed domain name aims to make an impression that the website is operated by the Complainant. Due to the high popularity of the Complainant and its VPN service, and considering the leadership position of the Complainant on the market, the "HIDE MY ASS" acquired a distinctive character. On balance of probabilities, the ordinary consumers believe that the disputed domain name is registered by the Respondent or with its authorisation.

No evidence suggests that the Respondent has been commonly known by the disputed domain name, nor that the

Respondent has ownership of any identical or similar trademark. No evidence of use of any Respondent's brand identical or similar to the disputed domain name has been found.

The Complainant's trademark is entirely reproduced in the disputed domain name. The use of the Complainant's trademark in the disputed domain name in the absence of the Complainant's authorization constitutes illegal unauthorized conduct of the Respondent. It was found in other UDRP cases that the use of a domain name for such illegal activity can never confer rights or legitimate interests on a respondent.

The Complainant did not grant any license or authorization to register or use the disputed domain name by the Respondent. The Respondent uses the disputed domain name to redirect internet users to the Complainant's website and the Respondent is thus benefiting financially from and unlawfully trading upon the renown associated with the Complainant's trademarks and name, because the value of the domain name depends mainly on its traffic. The redirection of internet traffic to the Complainant's official website occurs with the help of Siteplug under Sitedirect which is a software/redirect technology that identifies Internet user typing errors in domain names and corrects them and thus redirects consumers to the intended website. It has been established that redirecting to the Complainant's official website is not a use of a domain name in connection with any bona fide offer of goods or services in accordance with paragraph 4(c)(i) of the Policy and thus the Respondent cannot be viewed as making any legitimate non-commercial or fair use of the disputed domain name in accordance with para 4(c)(iii) of the Policy.

It is clear that the Respondent was seeking to create a false impression of association with the Complainant, which does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name and cannot establish a legitimate interest.

The sole purpose of the Respondent's registration of the disputed domain name is to monetize on the redirection of internet traffic to the Complainant's own official website, which demonstrates a prima facie case of non-legitimate use which cannot support a claim to rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c)(iii) of the Policy.

The Respondent was clearly aware of the registration and the use of the Complainant's trademarks before the registration of the disputed domain name especially due to well-known character of the Complainant's trademarks and HideMyAss VPN service. This is supported by the fact that the disputed domain name is redirected to the official website of the Complainant.

The Complainant and its trademarks have also a considerable presence in the Internet. A simple search on the Internet would have revealed the presence of the Complainant's trademark, its service and its official domain name. Therefore, it is not conceivable that the Respondent did not have actual notice of the Complainant's trademark rights at the time of registration of the disputed domain name. When entering the term "hidemyass" into the Google search engine, the returned results point to the Complainant and its business activities.

The Respondent could have easily performed a similar search before registering the disputed domain name. He would then quickly have learned that the Complainant owns the 'HIDE MY ASS' trademark and provides VPN services under "HIDEMYASS". The registration of the disputed domain names seeks to take advantage of an association with the businesses of the Complainant and its trademark.

Panels have consistently found that the mere registration of a domain name that is identical with a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

The Policy indicates in paragraph 4 (b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website. It is assumed that the Respondent used the whole of the Complainant's trademark into the disputed domain name only due to the well known character of the "HIDE MY ASS" trademark and Complainant's business, whilst commercially exploiting the fact that some internet users make spelling mistakes when searching for the official

Complainant's website. It is important to point out that there is not any rational reason (other than to abuse the Complainant's trademark and reputation) for using the Complainant's trademark in the disputed domain name.

By registering the disputed domain name with an intentional misspelling in the official Complainant's domain name and redirecting users to the Complainant's website, the Respondent clearly intended to attract internet users to its website to capitalize on the goodwill of the Complainant's name and well known trademarks for the Respondent's own commercial gain. It is well established that typo squatting is inherently parasitic and per se evidence of bad faith. Given the Complainant's renown, the Respondent had knowledge of the Complainant's rights at the time of registration of the disputed domain name and the Respondent deliberately registered it to take advantage of it and receive unauthorized commercial gain.

It has been established that use of a domain name to redirect traffic to the Complainant's own website, such as in the present case, also implies bad faith as there is risk that the Respondent may at any time cause internet traffic redirection to a website that is not of, or associated with, the Complainant.

The disputed domain name was intentionally registered by the Respondent for the specific purpose of trading on the name and reputation of the Complainant and to illegally monetize on redirection of consumers, who make unnoticeable spelling mistake when trying to reach the Complainant's official website.

Furthermore, the use of a proxy server by the true owner hidden behind the Respondent is markedly corroborate a finding of bad faith.

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.

As clarified in section "Other Legal Proceedings" above, CAC Case No. 103647 concerned the same domain name. However, the Complainant in that case was Avast Software s.r.o. and not Privax Limited. Furthermore, the panel in that case did not assess whether the disputed domain name was identical or confusingly similar to the complainant's trademark, did not assess any Respondent's rights or legitimate interests and did not assess whether the disputed domain name was registered and used in bad faith.

WIPO Jurisprudential Overview 3.0, at point 4.18, clarifies that "A refiled case is one in which a newly-filed UDRP case concerns identical domain name(s) and parties to a previously-decided UDRP case in which the prior panel denied the complaint on the merits".

In this case, the case should not be considered as a refiled case, because the parties are not the same (see, for example, CAC Case No. 100969). Furthermore, the prior panel did not deny the complaint on the merits.

However, even considering the complaint as a refiled case (due to the fact that the Complainant is the parent company of the complainant in CAC Case No. 103647), for the reasons below the Panel considers that it would be appropriate to provide a decision.

It should be noted that there is no provision in the Policy that deals expressly with the issue of refiling a complaint. The UDRP itself does not contain an appeal mechanism and there is no express right to refile a complaint. Indeed, the refiling of a complaint has been considered exceptional.

UDRP panels have accepted refiled complaints only in highly limited circumstances such as (i) when the complainant establishes that legally relevant developments have occurred since the original UDRP decision, (ii) a breach of natural justice or of due process has objectively occurred, (iii) where serious misconduct in the original case (such as perjured evidence) that influenced the outcome is subsequently identified, (iv) where new material evidence that was reasonably unavailable to the complainant during the original case is presented, or (v) where the case has previously been decided (including termination orders) expressly on a "without prejudice" basis. It is well established that these conditions for accepting a refiled complaint are not exhaustive (see, for example, WIPO Case No. D2011-0057).

Other panels have considered appropriate to provide a decision in a refiled case where the issue of the first complaint was related to the proof of the complainant's trademark rights, and the first panel did not ask for a rectification of the issue (see, for example, WIPO Case No. D2001-1041).

In specific circumstances, other panels have considered that the acceptance of a refiled complaint could be supported by logic, common sense, and the principles recognized and applied in relevant panel decisions under the Policy (see, for example, WIPO Case No. D2015-0622). The Panel shares this view and considers that the same reasoning is applicable in the present case, where the denial in the first complaint was based on the lack of proof of the complainant's trademark rights and no request for additional evidence was required by the panel.

PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

- (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.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "HIDE MY ASS", identified in section "Identification of rights" above.

The Panel observes that the registration of the Complainant's trademark predates the registration of the disputed domain name.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant's trademark.

It is well established that a domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name (see, for example, WIPO Case No D2016-2545).

In the present case, the Panel considers that the disputed domain name is confusingly similar to the Complainant's "HIDE MY ASS" trademark because the only difference between the "HIDE MY ASS" trademark and the disputed domain name is the addition of the prefix WWW and the top-level domain. It should be noted that the above-mentioned differences in the disputed domain name do not create any new word, or give the disputed domain name any distinctive meaning. It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547). Moreover, the Panel notes that visually the disputed domain name is so close to the Complainant's well-known "HIDE MY ASS" trademark that confusion is inevitable between them. Other Panels have considered such kind of behaviour as typo-piracy and have considered the domain name concerned as confusingly similar to the trademark concerned (see, for example, CAC Case No. 103718). The Panel shares this view.

Therefore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- No evidence suggests that the Respondent has been commonly known by the disputed domain name;
- No evidence suggests that the Respondent is the owner of any identical or similar trademark;
- No evidence suggests that the Respondent has used any brand identical or similar to the disputed domain name;
- The Complainant did not grant any license or authorization to register or use the disputed domain name by the Respondent;
- The Respondent uses the disputed domain name to redirect internet users to the Complainant's website.

In the absence of a Response, there is no indication in the present case that the Respondent has any right or legitimate interest in the disputed domain name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Indeed, other panels have considered that typosquatting constitutes evidence of the Respondent's lack of rights and legitimate interests in the disputed domain name (see, for example, CAC Case No. 102747).

Furthermore, other panels have considered that using a redirection service is neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use (see, for example, WIPO Case No. D2019-0667).

The Panel considers that, on the balance of probability, the Respondent knew of the reputation and goodwill that the Complainant had established in the trademark "HIDE MY ASS" and registered the disputed domain name with knowledge of the Complainant's rights and reputation. Indeed, it is not conceivable that the Respondent did not have the Complainant's trademark "HIDE MY ASS" in mind, when registering and using the disputed domain name. Under these circumstances, it cannot be concluded that the Respondent is making a "fair" use of the disputed domain name.

Taking into account that the Respondent does not seem to be commonly known by the disputed domain name, that the Respondent does not seem to be the owner of any trademark identical or similar to the "HIDE MY ASS" trademark, that the Complainant has not granted the Respondent any license or authorization to register or use its trademark, that the Respondent did not use the disputed domain name for any active website but used it with a redirection service, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

REGISTERED AND USED IN BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

- (i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] 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 [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site 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] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

Taking into account the distinctiveness and reputation of the trademark "HIDE MY ASS" also recognized by other panels, the Panel agrees that it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark "HIDE MY ASS" when registering the disputed domain name. Other panels considered that knowledge of a corresponding mark at the time of the domain name's registration can suggest bad faith (see, for example, WIPO Case No. D2017-0100) and the Panel shares this view.

The Panel agrees with the Complainant's contention, in line with other panels' view (see, for example WIPO Case No. D2019-1456), that typo squatting constitutes evidence of bad faith.

The Panel observes that the activity of redirection is also evidence of bad faith, as argued by the Complainant. This view is also shared by other panels (see, for example, WIPO Case No. D2019-2974).

The Panel considers that if the Respondent had legitimate purposes in registering and using the disputed domain name it would have filed a Response in this proceeding.

The Panel, having taken into account the Respondent's knowledge of the "HIDE MY ASS" trademark at the time of the disputed domain name's registration, that no response to the complaint has been filed, that it is a case of typo squatting, and that the disputed domain name is used for a redirection service, considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. WWWHIDEMYASS.COM: Transferred

PANELLISTS

| | |
|------|------------------|
| Name | Michele Antonini |
|------|------------------|

DATE OF PANEL DECISION 2021-07-18

Publish the Decision
