

Decision for dispute CAC-UDRP-103937

Case number	CAC-UDRP-103937
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Time of filing	2021-07-19 09:38:15
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Domain names	argoblockchains.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Argo Blockchain PLC
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Complainant representative

Organization	Fladgate LLP
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Respondent

Organization	Busy Braina
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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 does not own any trademark registration and seeks to rely on unregistered common law trademark rights.

FACTUAL BACKGROUND

The Complainant, Argo Blockchain Plc, is a public limited company incorporated in England and Wales on December 5, 2017. The Complainant is in the business of provision of technology, infrastructure and expertise to allow blockchain networks to operate efficiently. The Complainant has been using its name since December 22, 2017, and has been trading under the names “Argo”, “Argo Blockchain” and “Argo Blockchain PLC” (collectively, the “AB Marks”). The Complainant states as a result of the use of such names with customers, strategic partners and investors, it has garnered significant goodwill and reputation in the AB Marks in the United Kingdom (“UK”) and throughout the world. The Complainant also states that its website www.argoblockchain.com sets out details of its operations and the steps it has taken to promote its business and philosophy under the AB Names.

The disputed domain name was registered on February 6, 2021, and resolved to an active webpage.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that it has common law rights in the names "Argo" and "Argo Blockchain". The Complainant argues that the disputed domain name is almost identical to and therefore confusingly similar to the AB Marks on the basis that the disputed domain name wholly incorporates the Complainant's domain name "argoblockchain.com" with the addition of the letter "s" to pluralize the word "blockchain" which does not avoid the finding of confusing similarity.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. In addition, the Respondent has not demonstrated any legitimate non-commercial or fair use of the disputed domain name.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent should have known of the Complainant's AB Marks at the time of registration of the disputed domain name. The Complainant also asserts that the Respondent is attempting to attract, for commercial gain, Internet users to the Respondent's website, 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 of a product or service on the Respondent's website.

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

It is well established that where a complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for the purposes of standing to file a UDRP case (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), Section 1.2.1).

In the absence of trademark registrations, to establish unregistered or common law trademarks for the purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Examples of such relevant evidence demonstrating acquired distinctiveness (also referred to as secondary meaning) are (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g. consumer, industry, media) recognition, and (v) consumer services. In this respect, regarding brands acquiring relatively rapid recognition due to a significant Internet presence,

panels have also been considering factors such as the type and scope of market activities and the nature of the complainant's goods and/or services. (See WIPO Overview 3.0, Section 1.3).

The Panel will only look to the evidence submitted together with the Complaint to determine if the Complainant has met the threshold of the first element. In this regard, it is well accepted that the first element functions primarily as a standing requirement (see *Florida National University, Inc. v. Registration Private, Domains By Proxy, LLC / Toby Schwarzkopf*, WIPO Case No. D2017-0138; WIPO Overview 3.0, Sections 1.2 and 1.7).

Against the above backdrop, the Complainant in this case does not have any registered trademarks of its AB Marks. Therefore, the Complainant has to show that its AB Marks have become distinctive identifiers for its blockchain services in order to establish common law rights in its marks. In support of this, the Complainant states that it has utilized and traded under the trade name and unregistered trademark "Argo Blockchain" or "Argo" since December 2017. It submitted evidence of its listing on the London Stock Exchange which shows its share price as of June 10, 2021, and significant returns for its investors. The Complainant also submitted a press release dated June 3, 2021, which states, inter alia, that during May 2021 the Complainant mined a significant amount of Bitcoin or Bitcoin Equivalent (collectively, „BTC“).

In addition to the above, the Complainant submitted its press release financial results for the year ended 31 December 2020 to show that (i) its revenue increased to £19.0m from £8.6m in 2019, (ii) its total number of Bitcoins mined rose from 1,330 in 2019 to 2,465 in 2020, and (iii) its cash and digital assets held as at 31 December 2020 amounted to £6.7m (2019: £1.2m). The Complainant also submitted an Internet search result of its name which led to search results of itself. The Complainant also stated that it made investments in certain companies and executed certain agreements related to Bitcoin mining and cryptocurrency, however, no evidence was provided to support these assertions.

Having assessed the Complainant's evidence and taking into consideration that the Complainant is in the bitcoin mining and cryptocurrency industry, which is a relatively young industry, and that the Complainant was incorporated and only started using its AB Marks in commerce since December 2017, the Panel is inclined to find that the Complainant has established unregistered common law rights in its AB Marks. In the present case, the fact that the Respondent copied the Complainant's website and was using the disputed domain name, a near identical domain name to the Complainant's ARGO BLOCKCHAIN mark was also taken into account to assess the strength of Complainant's common law rights in the AB Marks. Be that as it may, the Panel highlights that this is a borderline case, and that the Complainant could have submitted further evidence such as the amount of sales made under its AB Marks, advertising and promotion under its AB Marks since 2017 in sales and other evidence showing public recognition in order to establish stronger unregistered common law rights.

Having established that the Complainant owns unregistered common law rights in its AB Marks, the Panel will now assess whether disputed domain name is identical or confusingly similar to the AB Marks. A domain name which consists of an obvious or intentional misspelling of the complainant's mark is considered to be confusingly similar for the purposes of the first element (WIPO Overview 3.0, Section 1.9). The addition of the letter "s" after the Complainant's "argoblockchain" does not avoid confusing similarity with the Complainant's AB Marks as it is sufficiently recognizable in the disputed domain name.

In addition, gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see WIPO Overview 3.0, section 1.11). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.* WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L'Oréal v. Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v. Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.* WIPO Case No. D2009-0877). The gTLD ".com" in the disputed domain name similarity does not serve to avoid confusing similarity with the Complainant's AB Marks.

Therefore, the Panel finds that the disputed domain name is similar to the Complainant's AB Marks and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect of the domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the AB Marks (See OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149; Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain name. The Panel also considered the evidence submitted by the Complainant of a cease and desist letter which was sent to the Respondent prior to the commencement of proceedings. The cease and desist letter contained attachments showing screenshots of the Complainant's website's and disputed domain name website's home page, meet the team page and site shareholder information page which are virtually identical. Notably, the disputed domain name website contains the Complainant's AB Marks and appears to be impersonating the Complainant. Panels have categorically held that the use of a domain name for illegal activity e.g. impersonation/passing off can never confer rights or legitimate interests on a respondent, which is the case here (see WIPO Overview 3.0, Section 2.13).

The Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant's prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant submitted evidence of screenshots comparing the website under the disputed domain name and its official website which shows that the Respondent is attempting to impersonate or pass off as the Complainant. In the Panel's view, such conduct can only be construed as bad faith registration and use of the disputed domain name by the Respondent.

In this case, the evidence shows that the Complainant's AB Marks are distinctive. The distinctive character of the Complainant's AB Marks and the fact that the Respondent copied the Complainant's website is evidence that the Respondent is unlikely to have registered the disputed domain name without sight and knowledge of the Complainant's AB Marks and it is implausible that there is any good faith use to which the disputed domain name may be put to. It is also the Complainant's evidence that the Respondent could not have registered the disputed domain names without prior knowledge of the Complainant's mark as the Respondent registered the disputed domain name 3 years after the Complainant's incorporation. The Complainant believes that the Respondent is attempting to imply a connection between the Complainant and Respondent in order to attract investment for the Respondent.

The Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel. The Panel also notes that the Respondent also did not respond to the Complainant's cease and desist letter which was served prior to the commencement of the proceeding.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's AB Marks, the fact that the disputed domain name was intentionally used in an attempt to attract, for commercial

gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s AB Marks, and the fact that no Response was submitted by the Respondent, the Panel draws the inference 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. **ARGOBLOCKCHAINS.COM**: Transferred

PANELLISTS

Name	Mr. Jonathan Agmon
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DATE OF PANEL DECISION 2021-08-19

Publish the Decision