

## Decision for dispute CAC-UDRP-103929

Case number CAC-UDRP-103929

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Time of filing 2021-07-13 08:41:03

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Domain names huawei-es.com

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### Case administrator

Organization Denisa Bilík (CAC) (Case admin)

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### Complainant

Organization HUAWEI TECHNOLOGIES CO, LTD

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### Complainant representative

Organization cv SNB-REACT ua

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### Respondent

Name Sonya Graves

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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.

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#### IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademarks:

- HUAWEI (word), International registration No. 0748648, of 4 December 2000, for goods and services in class 9, 35 and 42, designating several countries worldwide;
- HUAWEI (word), EUTM registration No. 009967291, filed on 13 May 2011 and registered on 17 February 2012, for goods and services in all 45 classes;
- HUAWEI (figurative), Spanish trademark registration No. 2672567(3), of 4 October 2005, for goods in class 9;
- HUAWEI (figurative), EUTM registration No. 008309585, filed on 19 May 2009 and registered on 3 December 2009, for services in class 35, 37, 38, 42;
- HUAWEI (figurative), international registration No. 1346122, of 7 February 2017, for goods in class 9, designating several

countries worldwide;

- HUAWEI MATE (word), EUTM registration No. 008309585, filed on 19 January 2015 and registered on 1 July 2015, for goods in class 9; and

- HUAWEI MateBook (word), EUTM registration No. 014889034, filed on 8 December 2015 and registered on 23 March 2016, for goods in classes 9, 35 and 38.

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#### FACTUAL BACKGROUND

The Complaint does not contain any specific information about the Complainant and its activity. It simply states that the Complainant's official website is at "www.huawei.com". The relevant website contains the following information about the Complainant: "Founded in 1987, Huawei is a leading global provider of information and communications technology (ICT) infrastructure and smart devices. We have approximately 197,000 employees and we operate in over 170 countries and regions, serving more than three billion people around the world".

According to the Complaint, the Complainant's trademarks are well known and this circumstance is confirmed by the fact that the prestigious Forbes magazine ranked the Complainant in the 14th position of the World's Best Employer in 2020, as well as in the 93rd position in the World's Most Valuable Brands in 2020.

The disputed domain name was registered on 1 April 2021. At the time of the filing of the Complaint, the disputed domain name led to a website displaying the Complainant's figurative trademark and offering for sale alleged Huawei laptops. The bottom of the relevant webpage contains information about the alleged proprietor of the website, identified as the company "Huawei ES" with registered office in Madrid, Spain, and providing the relevant company number.

Before filing the Complaint, the Complainant, through its representatives, sent several take down notices to the Respondent, the Registrar and the ISP, without receiving any reply.

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#### PARTIES CONTENTIONS

According to the Complainant, the disputed domain name is identical to the Complainant's trademarks. The disputed domain name incorporates the Complainant's trademarks with the addition of the suffix "-es", which refers to Spain. The addition of this suffix is unable to create a substantial difference of the disputed domain name with the Complainant's trademark.

In the Complainant's view, the Respondent lacks rights or legitimate interests in the disputed domain name in view of the fact that: (i) the Respondent does not own, nor is the licensee of, any HUAWEI-ES distinctive sign; (ii) the Respondent is not commonly known by the disputed domain name, despite it claims to be named "Huawei ES" on the corresponding website; (iii) the Complainant never authorised the Respondent to register and/or use the name "Huawei ES" and the Complainant's trademarks on its website or elsewhere; (iv) the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name. Rather, the Respondent registered and is being using the disputed domain name to attract Internet users to its website by creating the false impression of a link or other connection with the Complainant, for commercial gain.

Lastly, the Complainant maintains that the Respondent registered and is being using the disputed domain name in bad faith. According to the Complainant, the Respondent was well aware of the Complainant and of its trademarks at the time of the registration of the disputed domain name. A simple trademark or Internet search over the term "huawei" would have returned results exclusively linked to the Complainant. Furthermore, the Complainant's trademark HUAWEI is well known worldwide. The Respondent provided false contact information at the time of the registration of the disputed domain name. Indeed, while the Respondent should be based in Spain, the relevant e-mail address ends with the ccTLD ".ru". Furthermore, the telephone number mentioned in the Whois, has no real prefix, which induces to believe that it is incorrect. Lastly, the registration number and the address of the company mentioned at the bottom of the webpage corresponding to the disputed domain name do not refer to "Huawei ES" as indicated in this page, but to a different company, named Display

Portatil XXI, S.L., which also differs from the Respondent's name.

By registering a disputed domain name confusingly similar to the Complainant's earlier trademarks, and by displaying same on its website, without disclosing that there is no relationship between the Respondent and the Complainant, the Respondent is creating the false impression of an affiliation or other kind of connection with the Complainant. The website associated with the disputed domain name offers for sale products allegedly manufactured by the Complainant. The Complainant sent several take down notices to the Respondent, pointing out the Complainant's earlier trademarks and asking for the removal of the infringement, without receiving any answer in reply.

Thus, the Respondent registered and is being using the disputed domain name to intentionally attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks and its activity.

As far as the Respondent is concerned, it failed to submit any reply.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

##### 1. Rights

The Complainant has shown that it owns registered rights over the trademark HUAWEI since 2000. The disputed domain name fully incorporates the Complainant's trademark followed by the suffix "-es", which is the usual abbreviation for Spain. According to paragraph 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (the "WIPO Jurisprudential Overview 3.0"), "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". In the instant case, the suffix "-es" is a geographical indication, which lacks distinctive character. It is therefore incapable of excluding a finding of confusing similarity of the disputed domain name with the earlier mark.

Thus, the Panel is satisfied that the first requirement under the Policy is met.

##### 2. Absence of Rights or Legitimate Interests

While the overall burden of proof under the Policy proceedings rests on the Complainant, it is generally recognized that, in order to prove the respondent's lack of rights or legitimate interest in the domain name, it is sufficient for the Complainant to make out a prima facie case to shift the burden of proof to the Respondent. This is so because proving a third party's negative fact, such as the Respondent's lack of rights or legitimate interest, would otherwise result in an almost impossible task for the Complainant.

In the instant case, the Complainant indicates that it is not linked to the Respondent in any manner whatsoever. Furthermore, the Respondent was never authorised to include the Complainant's trademark in the disputed domain name, nor to use this

trademark on the corresponding website. The contact information provided at the bottom of the webpage to which the disputed domain name redirects is false, as demonstrated by the fact that the company registration number placed aside the name "Huawei ES" and the relevant address, correspond to those of a different company. Therefore, it does not appear that the Respondent is commonly known by the disputed domain name.

At the time of the filing of the Complaint, the Respondent was using the disputed domain name to access a website displaying the Complainant's trademarks prominently and offering for sale alleged Complainant's products at reduced prices. It is not known whether these goods are genuine or not; however, it is clear that by registering a domain name reproducing the Complainant's trademark followed by a geographical abbreviation, by displaying the Complainant's trademarks on its website and by pretending to act under the company name "Huawei ES", the Respondent has engaged in a fraudulent scheme designed to be deceptive and confusing, and an impersonation by the Respondent of the Complainant. This use of the disputed domain name cannot amount to a bona fide offering of goods and services or a legitimate non-commercial or fair use.

Pursuant to paragraph 5(f) of the Rules, if a Respondent fails to submit a Response, absent exceptional circumstances, the Panel must decide the dispute based on the Complaint. In the instant case, the Respondent could have rebutted the Complainant's arguments relating to its lack of rights or legitimate interests in the disputed domain name, but chose not to do so.

In view of the foregoing, the Panel is satisfied that the Complainant has proved that the Respondent lacks rights or a legitimate interest in the disputed domain name and that the second condition under the Policy is met.

### 3) Registration and use of the disputed domain name in bad faith

The Complainant submits that its HUAWEI trademark enjoys international reputation. In order to substantiate this claim it mentions that this trademark "has recently been recognized by the prestigious Forbes magazine in the 14th position of the World's Best Employer in 2020 ranking, as well as in the 93rd position in the World's Most Valuable Brands in 2020". However, no supporting evidence has been provided. In a UDRP proceeding, a Complainant is required to prove its allegations even if the Respondent fails to submit a response. Therefore, for the purpose of this decision, the Panel cannot consider the trademark HUAWEI as one enjoying international reputation. The Panel cannot even consider that the HUAWEI trademark is highly distinctive since the Complainant failed to submit any evidence in this regard. Thus, in evaluating whether the Respondent acted in bad faith when registering and using the disputed domain name, the Panel shall consider the HUAWEI trademark endowed with a normal degree of distinctive character.

Notwithstanding the above, the Panel finds that the Complainant is right when it asserts that the Respondent was well aware of the Complainant's trademark at the time of the registration of the disputed domain name. Indeed, the Respondent was using the disputed domain name to access a website prominently displaying the Complainant's trademark accompanied by its figurative element. At the bottom of the website was the mention of a Spanish company named "Huawei ES" with a Spanish address. As indicated above, this information is false. The website was used to sell alleged Complainant's products. In view of these circumstances, it is clear that the Respondent was aware of the Complainant's trademark at the time of the registration of the disputed domain name, and that it targeted the Complainant and its trademarks to disrupt Internet users looking for the Complainant in Spain, for its own profit. The Complainant sent several take down notices to the Respondent, which remained unanswered. Furthermore, it is likely that the Respondent provided false contact information at the time of the registration of the disputed domain name, due to the several incongruences contained in the relevant Whois information, as mentioned above.

For all these reasons, the Panel finds that the Respondent registered and used the disputed domain name in bad faith, to intentionally attempt to attract, for commercial gain, Internet users to its own website, by creating a likelihood of confusion with the Complainant's mark, as to the source, sponsorship, endorsement and affiliation of this website and related activity by the Respondent.

Hence, the Panel is satisfied that also the third and last condition under the Policy is met.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. HUAWEI-ES.COM: Transferred

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## PANELLISTS

Name **Angelica Lodigiani**

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DATE OF PANEL DECISION **2021-08-25**

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Publish the Decision

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