

Decision for dispute CAC-UDRP-103983

Case number	CAC-UDRP-103983
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Time of filing	2021-08-18 09:15:52
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Domain names	foxt toys.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Vertanex e.U.
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Respondent

Organization	CentralNic Ltd
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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 owns the following European Union Intellectual Property Office Trademark Registration:

FOXTOYS, Reg. No. 0184557501, dated April 21, 2021.

FACTUAL BACKGROUND

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

The entire substantive portion of the Complaint reads as follows:

“FoxToys is a well established name in the Toys and Gaming Market. It is established on different platforms and is highly recognized world wide in this niche. FoxToys is also a TradeMark under the EUIPO. <foxt toys.com> is not used in any way, just with a placheolder button to sell it to the public!”

The disputed domain name <foxt toys.com> was registered on September 21, 2010.

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 Panel declines to analyze Paragraph 4(a)(ii) of the Policy in this case.

BAD FAITH

The Complainant has failed to prove 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).

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. Is the disputed domain name confusingly similar to a trademark or service mark in which the Complainant has rights?

Paragraph 4(a)(i) of the Policy requires that the Complainant demonstrate its ownership of trademark rights and that the disputed domain name is confusingly similar to such trademark. *Boehringer Ingelheim Animal Health France / Merial v. S Jon Grant*, 103255 (CAC September 30, 2020) (“it is imperative that the Complainant provides evidence that it has rights in a trade mark or service mark, following which the Panel shall assess whether or not the disputed domain name is identical or confusingly similar to the Complainant’s trade mark(s).”).

The Complainant has submitted a copy of its Trademark Registration Certificate from the European Union Intellectual Property Office (“EUIPO”) as evidence that it owns registered rights to its asserted FOXTOYS trademark. Registration with such an office has been found sufficient to satisfy the threshold requirement of Paragraph 4(a)(i) of the Policy. *Margaritaville Enterprises, LLC v. Neil Wein*, FA 1916531 (FORUM November 9, 2020) (“It is well established by decisions under this Policy that a trademark registered with a national authority is evidence of trademark rights”). The disputed domain name contains the entirety of the FOXTOYS trademark and further adds the “.com” gTLD. Although the Complainant does not specifically claim that the disputed domain name is identical or confusingly similar to the asserted trademark, prior panels have found confusing similarity under similar fact situations. Also, the extension “.com” typically adds no meaning or distinctiveness to a disputed domain name and may be disregarded in the Paragraph 4(a)(i) analysis. *Stoggles Inc. v. chen da guo*, 103738 (CAC August 16, 2021) (“The Panel accepts that the prominent part of the disputed domain name [stoggles.com] is identical to Complainant’s trademark STOGGLES, and the “.com” generic top-level domain (“gTLD”) is irrelevant when establishing whether or not a mark is identical or confusingly similar for the purposes of paragraph 4(a)(i) of the Policy”).

Accordingly, the Panel finds that the Complainant has rights to its claimed trademark and that the addition of the “.com” TLD thereto in the disputed domain name is insufficient to avoid a finding that it is confusingly similar to the Complainant’s trademark. Thus, the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

B. Does the Respondent have rights or legitimate interests in respect of the disputed domain name?

As the Panel finds that the Complainant failed to satisfy Paragraph 4(a)(iii) of the Policy (Registration and Use in Bad Faith), the Panel declines to analyze Paragraph 4(a)(ii) of the Policy.

C. Has the disputed domain name been registered and used in bad faith?

A Respondent’s knowledge of rights in a Complainant’s asserted trademark at the time of registering a disputed domain name is generally a sufficient foundation upon which to build a case for bad faith under Paragraph 4(a)(iii) of the Policy, and can be demonstrated through the strong reputation of the trademark as well as a Respondent’s use of such trademark. *Arcelormittal (SA) v. acero*, 102399 (CAC April 22, 2019) (“the Respondent’s use of the disputed domain name and content of the web site under the disputed domain name prove Respondent’s actual knowledge of the Complainant and its trademark.”) The Complainant here asserts that “FoxToys is a well established name in the Toys and Gaming Market. It is established on different platforms and is highly recognized world wide in this niche.” However, the Complainant provides no evidence to support this

claim (a trademark registration is evidence of rights but not of the scope or extent of a trademark’s reputation with the public). The Panel attempted to browse to the domain flipfox.net which appears in the Complainant’s email address listed in this case but this results in a webpage displaying a message in the German language to the effect that “This shop doesn’t yet exist.” The Panel further conducted various online searches for the Complainant’s company name and asserted mark but found no results of any relevance.

Further, the Panel browsed to the disputed domain name to find a pay-per-click website with links titled “Models”, “Small Truck Models”, “Collectors Car Sale”, “Donate My Car Near Me”, and “How To Shop For A Car Online”. The top of the page displays a link with the message “Buy this domain”. While certain of the links on this page may bear some relation to the Complainant’s claimed sale of toys and the link at the top of the page may indicate the Respondent’s desire to sell the disputed domain name, the Panel notes that the disputed domain name was registered in 2010 and the Complainant’s submitted trademark registration was filed in 2021. No evidence is provided to indicate that the Complainant possessed trademark rights at an earlier date. Paragraph 4(a)(iii) of the Policy is stated in the conjunctive “bad faith registration and use”. The lack of any evidence that the Complainant’s trademark existed when the disputed domain name was registered suggests that the Respondent could not have known of the trademark and thus could not have acted in bad faith at that point in time. See *VitriVax, Inc. v. Alexander Segal*, FA 1959542 (FORUM September 10, 2021) (“The Panel notes that Respondent’s registration of the disputed domain name predates Complainant’s first claimed rights in the VITRIVAX mark (filed on November 5, 2020 and proceeded to registration on August 10, 2021). Complainant generally cannot prove registration in bad faith per Policy paragraph 4(a)(iii), as the Policy requires a showing of bad faith registration and use.”)

In view of the above-stated deficiencies in the Complaint and Complainant’s submissions, the Panel cannot, by a preponderance of the evidence, find that the Respondent registered and uses the disputed domain name in bad faith under Paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **FOXTOYS.COM:** Remaining with the Respondent

PANELLISTS

Name	Steven M. Levy, Esq.
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DATE OF PANEL DECISION	2021-09-12
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Publish the Decision
