

Decision for dispute CAC-UDRP-104072

Case number	CAC-UDRP-104072
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Time of filing	2021-10-12 09:33:09
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Domain names	jcdecqux.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	JCDECAUX SA
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	fer abregao
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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 is the proprietor of a number of marks including the mark 'JCDecaux', registered under the international (Madrid) system since 2001 and designated in multiple jurisdictions (registration 803987), on the basis of a French mark (registration 013106834, 20 June 2001), in classes including 6 and 9 (urban furniture) and 35 (advertising), duly renewed and of current validity.

FACTUAL BACKGROUND

The Complainant, a company (société anonyme) with its seat in Neuilly-sur-Seine, France, is active in multiple territories in the field of outdoor advertising (across street furniture, transport advertising, and billboards). It was founded in 1964, and now operates in 80 countries; it has operated its own website (at <JCDECAUX.COM>) since 1997.

The Respondent, an individual with an address in Lagos, Nigeria, registered the disputed domain name on 5 October 2021.

PARTIES CONTENTIONS

No administratively compliant Response has been filed. One email sent to the Respondent was successfully relayed, although

the Respondent never accessed the online platform, and written notice of the dispute was returned as undeliverable to the Provider.

The Complainant contends that all relevant aspects of the Policy have been met and asks that the disputed domain name be transferred to itself. It supports this request with a number of annexes, including evidence of the use of the disputed domain name by the Respondent in respect of the configuration of mail servers.

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).

Disregarding the TLD .com as is the established practice under the Policy, the only difference between the Complainant's mark and the disputed domain name is the substitution of the letter Q for the letter A. While this is not identical, it is readily identified as being confusingly similar. The Complainant has also highlighted a number of earlier discussion of Panels where other single-character variations have been found to meet the requirements under this paragraph, e.g. - CAC Case No. 101990, JCDECAUX SA v. Gemma Purnell <jcdeceux.com>.

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).

The Complainant has declared that the Respondent is neither affiliated with nor authorised by it (including in respect of registration of the disputed domain name or any use of the Complainant's mark), and that it (the Complainant) neither carries out any activity for nor has any business with the Respondent. The Respondent has, through its failure to participate in the present proceedings, not challenged this prima facie case in respect of paragraph 4(a). Moreover, there is no information available to the Panel that would lead to any conclusion other than the absence of rights or legitimate interests. In particular, the Respondent is known (by its own registration) as 'fer abregao' which bears no resemblance to the disputed domain name. Furthermore, the material published at the disputed domain name - consisting of what the Complainant terms links to unrelated information, and what appears to the Panel to be default configuration information - does not point towards any relevant rights or legitimate interests that the Panel could consider further.

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).

The Panel accepts that the Complainant's mark is well-known and that the Respondent would have had it mind when registering the disputed domain name, being a very small variation from the Complainant's mark which itself has no apparent secondary or alternative meaning (and is also the Complainant's company name). In respect of use, the Complainant identifies the present dispute as one within the scope of the 'passive holding' doctrine first set out in WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows. The Panel therefore applies the useful summary set out in the WIPO Jurisprudential Overview, version 3.0, para 3.2.

Under (i) the degree of distinctiveness or reputation of the complainant's mark, the Panel is satisfied that the mark is distinctive and enjoys an obvious international reputation over a long period of time. Regarding (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, the Panel notes that the Respondent never accessed the online platform. Regarding (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), the Panel notes that the Provider was unable to contact the Respondent by post due to the notice being undeliverable to an inaccurate address, i.e. said written notice was returned undelivered to the Provider due to such failure.

Finally, regarding (iv) the implausibility of any good faith use to which the domain name may be put, the Panel accepts that there

is no plausible actual or contemplated active use of the domain name by the Respondent that would be anything under than in bad faith. The Panel further notes in this final regard the Complainant's provision of evidence - again uncontradicted by the Respondent - that MX (mail) servers have been set up in respect of the disputed domain name, representing unexplained preparatory acts to the use of the disputed domain name for the sending of emails. In turn, it is more likely than not that the Respondent has commenced a series of actions that are themselves in bad faith; if a good faith use was contemplated, the Respondent was welcome to explain this to the Panel, but chose not to do so.

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

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark JCDECAUX, and that the replacement of one letter with another does not prevent a finding of confusing similarity with the Complainant's mark. It is likely, in light of the nature of the Complainant's mark, that the Respondent would have been aware of the Complainant, and that the situation is one of 'passive holding' as an established form of bad faith use under the Policy (noting further the initial steps taken by the Respondent in respect of the configuration of mail servers). The Panel can find for these reasons that the disputed domain name was registered and is being operated in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the Panel ordered that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **JCDECQUX.COM:** Transferred
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PANELLISTS

Name	Dr Daithi Mac Sithigh
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DATE OF PANEL DECISION 2021-11-18

Publish the Decision
