

Decision for dispute CAC-UDRP-104065

Case number	CAC-UDRP-104065
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Time of filing	2021-11-04 09:17:35
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Domain names	es-huawei.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	ALEX BREDDON
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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 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.

The Complainant's main and official website is available at "www.huawei.com".

FACTUAL BACKGROUND

Founded in 1987, the Complainant is a leading global provider of information and communications technology (ICT) infrastructure and smart devices. The Complainant has approximately 197,000 employees and operates in over 170 countries and regions, serving more than three billion people around the world. The Complainant is of the view that its trademarks are known by the Respondent, as the Complainant has been in the business for a considerable number of years and its trademarks have a well-known status all around the world.

The disputed domain name was created on 4 August 2021.

The Complainant states that the Respondent is not commonly known by the disputed domain name. Respondent is not making a legitimate non-commercial or fair use of the disputed domain name but is intending to use it for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has no relationship with Respondent, it has never authorized Respondent to use the disputed domain name or any other domain name which reproduces its industrial property rights. In the absence of any license or permission from the Complainant to use its trademarks, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed. Therefore, the Respondent is using in the view of the Complainant the disputed domain name to intentionally attract, for commercial gain, Internet users to the website, by creating a likelihood of confusion with the Complainant's trademarks, products and services, and this conduct additionally confirms that the Respondent has used the domain name in bad faith.

Furthermore, on the website of the disputed domain name, HUAWEI trademarks were displayed together with the colours and aesthetics, font type and feel of the Complainant's main website.

Finally, the Respondent's bad faith is in the view of Complainant demonstrated by its actual knowledge of Complainant's rights in the prior HUAWEI trademarks to registering the disputed domain name.

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.

PRINCIPAL REASONS FOR THE DECISION

1. 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 prefix "-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 prefix "-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. 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.

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 and adding a geographical abbreviation, by displaying the Complainant's trademarks on its website and by pretending to act under the company name "Huawei", 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 is met.

3. The Complainant submits that its HUAWEI trademark enjoys international reputation.

The Panel agrees with Complainant that the combination of the distinctiveness of the Complainant's trademark and its extensive use across the world for several decades makes it highly unlikely that the Respondent did not know about the Complainant before 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.

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.

For 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 finds that the disputed domain name was registered and is being used in bad faith. Therefore, the Panel finds that the third element of the Policy is fulfilled.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ES-HUAWEI.COM**: Transferred

PANELLISTS

Name	Jan Christian Schnedler, LL.M.
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DATE OF PANEL DECISION	2021-11-29
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Publish the Decision
