

## Decision for dispute CAC-UDRP-104144

Case number CAC-UDRP-104144

---

Time of filing 2021-11-10 09:49:27

---

Domain names customwritings.com

---

### Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

---

### Complainant

Organization Writera Limited

---

### Respondent

Name alexander ershov

---

#### OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain name.

---

#### IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

- United States trade mark registration no. 5749163, dated 14 May 2019, for the word mark CUSTOMWRITINGS.COM, in class 41 of the Nice Classification.

The trade mark CUSTOMWRITINGS.COM was registered in the name of One Freelance Limited (“the previous owner of the trade mark”). However, the Complainant has provided a copy of an agreement dated 6 October 2021, and stated to have been made between One Freelance Limited and the Complainant (“the Agreement”). As a result of the Agreement, the trade mark CUSTOMWRITINGS.COM was assigned to the Complainant.

The Panel is therefore satisfied that the Complainant is the owner of the trade mark CUSTOMWRITINGS.COM.

(hereinafter, “the Complainant’s trade mark”; “the Complainant’s trade mark CUSTOMWRITINGS.COM”; or “the trade mark CUSTOMWRITINGS.COM”).

---

#### FACTUAL BACKGROUND

The Complainant’s contentions can be summarised as follows:

- I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant provides academic writing assistance and associated education services through its domain name <customwritings.com>, which is registered since October 2005.

The Complainant asserts that, prior to the registration of its trade mark, "CUSTOMWRITINGS.COM" had been used by the Complainant as a trade name since at least 2006 in the same area of business.

The Complainant further asserts that it made significant efforts to advertise and promote its services, which resulted in the Complainant's trade mark being recognisable and the services provided highly praised among customers.

The disputed domain name <customwritings.com> was registered on 18 October 2021, and it resolves to a website which offers the same type of services provided by the Complainant ("the Respondent's website").

The Complainant claims that the disputed domain name is virtually identical to its trade mark, in so far as the disputed domain name incorporates the Complainant's trade mark CUSTOMWRITINGS.COM, with a minor replacement of the letter "i" with the letter "l" in the word "customwritings". The Complainant sustains that this is a plain example of typosquatting, in which the spelling of a trade mark is minimally changed by the substitution of a similar-looking letter. The Complainant argues that the letter "i" standing side-by-side may be visually perceived as the letter "l", and that this is insufficient to alter the high level of optical, phonetic and conceptual similarity between the disputed domain name and the Complainant's trade mark.

## II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant states that the Respondent is not related in any way with the Complainant or the previous owner of the trade mark CUSTOMWRITINGS.COM, nor have they carried out any activity for, or have any business with, the Respondent.

In addition, the Respondent is not known by the disputed domain name; the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, nor is the Respondent using the disputed domain name for legitimate non-commercial or fair use. The Complainant contends, instead, that the Respondent will never be capable of using the disputed domain name for a legitimate purpose in so far as the Respondent's website diverts Internet users seeking for the Complainant's services, by intentionally creating a likelihood of confusion with the Complainant's trade mark as to an affiliation or association between the Complainant and the Respondent, and/or between the Respondent and the Complainant's trade mark.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

## III. The Respondent registered and is using the disputed domain name in bad faith

### Registration in bad faith

The disputed domain name is virtually identical to the Complainant's trade mark CUSTOMWRITING.COM differing only by the changing of the letter "i" to the letter "l", which evidences bad faith registration.

The Complainant further states that the Respondent knew about the existence of the Complainant's website as it used SEO techniques to attract Complainant's traffic.

### Use in bad faith

The Respondent deliberately used the text part of the Complainant's trade mark "CUSTOMWRITINGS.COM" in the Terms and Conditions on the Respondent's website as well as in its Privacy Policy documents. The Respondent also used the text part of the Complainant's trade mark "CUSTOMWRITINGS.COM" as a keyword for the Google search engine and Google AdWords, in addition to the advertisements being targeted to US customers, where the Complainant's trade mark is

registered. The Complainant advises that no answer was provided by the Respondent to a cease and desist notice.

Lastly, the Complainant informs that a Complaint in respect of the same disputed domain name had been filed with CAC by the previous owner of the trade mark (CAC Case No. 103783, One Freelance Limited v Vika Korotkova), in which case the respondent's website used the same layout design as the one of the present matter. The panel appointed in CAC Case No. 103783 determined the transfer of the disputed domain name to the previous owner of the trade mark.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

---

#### PARTIES CONTENTIONS

No administratively compliant Response has been filed.

---

#### RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade 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. Preliminary Matter: Language of Proceeding

A.1 The Complainant's language request

The Complaint was filed in English.

The registrar's verification response indicated that the language of the registration agreement for the disputed domain name is German.

On 10 November 2021, the Complainant submitted a request for English to be the language of proceedings, as follows:

"In accordance with Paragraph 11 of Rules for Uniform Domain Name Dispute Resolution Policy I/we communicate the following:

On behalf of Writera Limited, we would like to request for the change of the language to English due to the following reasons:

- The disputed domain name includes English letters (not German) and particularly consists of the English words "custom", "writings"

- the disputed domain name displays the website with ONLY English content;
- the disputed domain name is specifically advertised to USA market (attached is an evidence of Google Advertisement) which implies that the owners of disputed domain name know or should supposedly know English well enough to offer services and operate business in English;
- Based on the information collected from Domain Register Company – Ledl.net Gmbh, the Registrant of the disputed domain is Alexander Ershov, located at Mira Avenue, Cheboksary, Russian Federation. So, the Respondent appears to be a Russian Federation resident and is thus presumably not a native German speaker.

Thus, considering all the above, we have a good reason to believe that the change of the language to English is fair to both parties”.

## A.2 The Panel’s determination

The Panel is given wide discretion under Rule 11 (a) of the UDRP Rules to determine the appropriate language of the administrative proceedings. The Panel notes, however, that Rule 10(b) and Rule 10(c) of the UDRP Rules vest the Panel with authority to conduct the proceedings in a manner that it deems appropriate, while also ensuring that the parties are treated with equality, that each party is given a fair opportunity to present its case, and that the proceedings be conducted with due expedition.

The Panel’s determination on the language of proceedings is centred on the following six guiding factors:

(i) the language of the disputed domain name string: the Panel accepts that English is the only identifiable language in the disputed domain name string;

(ii) the content of the Respondent’s website: the Respondent’s website is in English only, as asserted by the Complainant, which suggests to the Panel that the Respondent has ample knowledge of the English language;

(iii) the language(s) of the parties: the Complainant is based in the Republic of Cyprus and the Respondent resides in the Russian Federation, and none of which are English or German speaking countries;

(iv) the Respondent’s behaviour in the course of the proceedings: the Panel notes that the Respondent has shown no inclination to participate in the proceedings; the Respondent did not object to the Complainant’s language request, nor did it file a Response;

(v) the Panel’s overall concern with due process: the Panel has discharged its duty under Rule 10 (c) of the UDRP Rules; and

(vi) the balance of convenience: while determining the language of proceedings, the Panel has a duty to consider who would suffer the greatest inconvenience as a result of the Panel’s determination. On the one hand, the determination of English as the language of proceedings is unlikely to cause the Respondent any inconvenience, not the least given the Respondent’s default throughout the proceedings. The determination of German as the language of proceedings, on the other hand, is very likely to cause the Complainant inconvenience, and to interfere with the overall due expedition of the proceedings under the UDRP Rules.

In view of the above guiding factors, the Panel declares that English be the language of the proceedings.

## B. General

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain name:

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii. The disputed domain name has been registered and is being used in bad faith.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three Policy elements in turn.

#### C. Identical or Confusingly Similar

The UDRP test under the first element provides for a juxtaposing approach, according to which the textual components of the disputed domain name and the Complainant's trade mark are to be compared side by side.

In order to succeed under the first element of the Policy, the Complainant must provide 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.

As indicated under the section "Identification of rights" above, the Panel is satisfied that the Complainant owns trade mark rights in "CUSTOMWRITINGS.COM" since 2019.

The disputed domain name is <customwrltings.com>.

The Panel notes that the Complainant's trade mark CUSTOMWRITINGS.COM is nearly fully incorporated into the disputed domain name.

Whilst the Complainant's trade mark contains the word "writings", the disputed domain name is composed of the word "wrltings"; the substitution of the letter "i" with the letter "l" is rather immaterial in the Panel's view to confer any distinctiveness in the Respondent's domain name string, and certainly incapable of dispelling the visual and phonetic confusing similarity between the disputed domain name and the Complainant's trade mark CUSTOMWRITINGS.COM. The Panel further notes that the capitalisation of the letter "i" produces a result almost visually identical to the letter "l".

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(i) of the UDRP Policy.

#### D. Rights or Legitimate Interests

The Respondent has not participated in these UDRP proceedings. The Panel is however empowered to draw adverse inferences from the Respondent's disinclination to participate (UDRP Rule 14 (b)).

The Panel notes that the Complainant denies categorically any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant further argues that the Respondent is not known by the disputed domain name; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Complainant contends, in particular, that the Respondent's website diverts Internet users seeking for the Complainant's services, by intentionally creating a likelihood of confusion with the Complainant's trade mark as to an affiliation of association between the Complainant and the Respondent and/or between the Respondent and the Complainant's trade mark (the consequences of which are particularised under section E below).

The Complainant has provided robust evidence to support its contentions, whereas the Respondent did not rebut any of the Complainant's assertions.

The Panel has considered the available evidence and finds it to lend credence to the Complainant's case.

In addition, in the Panel's view, the choice of a domain name which incorporates a complainant's trade mark wholly or virtually wholly (as in this case), and is unaccompanied or unsupported by any credible explanation as to the reason for this coincidence, could further evidence a lack of rights or legitimate interests.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

#### E. Registered and Used in Bad Faith

In order to meet the third requirement under the Policy, the Complainant must provide evidence that the disputed domain name was registered and is being used in bad faith.

The Policy enumerates non-exhaustive circumstances which would evidence bad faith registration and use of a domain name, as follows:

- i. circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- ii. the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- iii. the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

#### E.1 Registration in bad faith

The following elements are compelling indicia to this Panel that the disputed domain name was registered in bad faith:

- The Panel accepts the Complainant's assertion that the disputed domain name is virtually identical to the Complainant's trade mark CUSTOMWRITING.COM differing only by the substitution of the letter "i" with the letter "l";
- The Complainant operates its activities through the domain name <customwritings.com>, which was registered in 2005;

- The disputed domain name <customwritings.com> was registered in 2021;
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name; and
- The Respondent's lack of participation prior to (by not responding to a cease and desist notice), and during the course of, the proceedings.

## E.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

"(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location".

The Panel notes that the textual component of the Complainant's trade mark CUSTOMWRITINGS.COM is used and displayed on the Respondent's website in a rather prominent manner, in addition to numerous references to the Complainant's trade mark in sections of the Respondent's website, including in the Terms and Conditions, the Privacy Policy, the FAQ and the About us subsections.

In addition, the Panel notes that Annexes 9 and 10 to the Complaint contain evidence of the Respondent's use of the textual component of the Complainant's trade mark CUSTOMWRITINGS.COM as a keyword for Google search engine and Google AdWords.

Taken together, the Respondent's behaviour suggests that the disputed domain name was registered for a potential financial gain, i.e. to misleadingly diverting Internet users (most likely the Complainant's - existing or potential - customers because of the use of the Complainant's trade mark within the disputed domain name string and on the Respondent's website) to the Respondent's website and inviting them to consume their services through the Respondent's website (circumstance iv. above). In particular, the Panel finds that the Respondent has attempted to suggest an affiliation with, or a connection to, or an endorsement of the Complainant or even to impersonate the Complainant through the use of the Complainant's trade mark CUSTOMWRITINGS.COM in the dispute domain name string and on the Respondent's website in the manner described above.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. CUSTOMWRLTINGS.COM: Transferred

## PANELLISTS

Name	Dr Gustavo Moser
------	------------------

DATE OF PANEL DECISION 2021-12-15

Publish the Decision