

Decision for dispute CAC-UDRP-104149

Case number	CAC-UDRP-104149
Time of filing	2021-11-15 09:59:33
Domain names	affordablepaper.company

Case administrator

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

Organization	Writera Limited
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Respondent

Name	Mihail Vasilev
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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

In this proceeding the Complainant relies on the following trademark:

- AFFORDABLE PAPERS (word), US trademark registration No.5751325, registered on May 14, 2019 for the following services in class 41: “education services, namely, providing on-line writing and rewriting of articles, essays, memos, case studies, dissertations, literature analysis and reviews for journals, publications, online platforms and study purposes other than for advertising or publicity, written text editing, proofreading of articles, essays, memos, case studies, dissertations, literature analysis and reviews in the field of academic writing assistance; providing information about education; providing information about online education”.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant is the Assignee and current owner of the US trademark No. 5751325 – “AFFORDABLE PAPERS”.

The Complainant operates the domain name affordablepapers.com that has been registered since April 2, 2006.

The Complainant claims that the trademark has been used as a trade name since July 2006 for the academic writing assistance and associated education services relevant for the class 41.

The disputed domain name was registered in May 2021. At the time of the registration of the disputed domain name the Complainant's trademark "AFFORDABLE PAPERS" acquired distinctiveness and reputation through long public use since the year 2006.

The Complainant claims that its website and the trade name "AFFORDABLE PAPERS" were already widely known among the target audience.

The Complainant also contends that it made a lot of efforts to advertise and promote its services, which made the mark recognizable among customers.

The disputed domain name incorporates the Complainant's trademark with some minor changes, such as elimination of the last letter "s" in the word "PAPERS".

This modification is insufficient and does not change the overall impression.

The Complainant believes the disputed domain name is confusingly similar to its trademark since the trademark "AFFORDABLE PAPERS" is included in its entirety within the disputed domain name. The Complainant adds that the website by the disputed domain name offers similar services to the Complainant's services and this increases the confusing similarity.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent has no rights or legitimate interests and is not related in any way with the Complainant, as the Complainant has not carried out any activity for, nor has any business with the Respondent.

The Respondent has not been previously known by the disputed domain name. Respondent's use is neither a bona fide offering of goods or services nor a legitimate non-commercial or fair use.

The Complainant states that the Respondent will never be capable of using the disputed domain name for a legitimate purpose. According to the Complainant the goodwill in the trademark acquired through such a long and extensive use on the market and the way the Respondent started to use the disputed domain name results into the situation, in which members of the public will always assume that there is an association between the Respondent on the one hand and the Complainant and its trademark on the other hand.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant states that the disputed domain name incorporates the Complainant's trademark with the elimination of the last letter "s" in the word "PAPERS".

This, in the Complainant's opinion, is a plain example of "typosquatting" when the spelling of a trademark has been minimally changed by the substitution of a similar – looking letter. The website by the disputed domain name offers the same services as the Complainant.

The Complainant also claims the following shall be indication of Respondent's bad faith:

- The Respondent used the text part of the trademark and additionally the text part of the website operated by the Complainant as keywords for the Google search engine and Google AdWords. This indicates that the Respondent deliberately misleads Internet users;
- The Complainant sent a cease and desist letter but there was no response;

- The Respondent copied the Complainant's website design and used SEO technics to attract traffic.

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

A. Identical or confusingly similar with Complainant's trademark

The Complainant owns the US trademark registration for the "AFFORDABLE PAPERS" word mark.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The disputed domain name fully incorporates the Complainant's word trademark with a minor change: instead of "papers" in the plural form it contains "paper" – in singular form.

As stated in WIPO Overview 3.0 "It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name". (see par. 1.7).

In the present case, the Complainant's word trademark is recognizable within the disputed domain name as there is both visual and phonetic (aural) similarity between the disputed domain name and the Complainant's word trademark.

The gTLD ".company" shall be disregarded under the confusing similarity test as it does not change the overall perception of the disputed domain name.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

- (i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
- (ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see *Julian Barnes v. Old Barn Studios*, WIPO Case No. D2001-0121; *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110 and CAC Case No. 101284.

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows all reasonable inferences of fact in the allegations of the complaint to be deemed true (see paragraph 14(b) of the Rules and *Vertical Solutions Management, Inc. v. webnet-marketing, inc.*, FA 95095, National Arbitration Forum).

As stated in WIPO Overview 3.0 the panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed (par. 2.1. of WIPO Overview 3.0).

The disputed domain name was registered on May 19, 2021. The website by the disputed domain name appears to offer paper writing services which are similar to the services of the Complainant and the services for which the Complainant's trademark is registered.

The Complainant has made a prima facie case in respect of Respondent's lack of rights or legitimate interests, in particular absence of authorization from the Complainant and the fact that the disputed domain name is used for a website offering similar services as the Complainant and having a similar design so that there is an association between the Complainant and the Respondent.

The Panel notes that the Complainant's trademark may be seen as rather descriptive in respect of the essay and paper writing services as will be further discussed under the third UDRP element.

One could potentially see legitimate rights and interests of the Respondent in respect of the disputed domain name, i.e. for operating an independent business in a similar services field.

However, in this case it appears that the Respondent indeed attempted to imitate the Complainant's business and to copy the design of the Complainant's own website (i.e. use of very similar colors).

The Respondent also uses the terms "Affordable Papers" in various sections of its website.

This indicates that the Respondent is not operating its own independent business under a descriptive designation "Affordable Paper" or "Affordable Paper Company" but rather copies the Complainant.

Such use does create rights or legitimate interests.

The Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

These circumstances are non-exhaustive and other factors can also be considered in deciding about the bad faith element.

It is well established that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see par. 3.1 of WIPO Overview 3.0).

Targeting by the respondent is important in establishing bad faith under UDRP.

As noted before, the Complainant's mark is not very strong per se and can be seen as descriptive of the Complainant's services. A similar conclusion was made in the CAC Case No. 102537 over <AFFORDABLEPAPERS4U.COM> filed by the previous trademark owner where the Panel stated:

"Since the Panel has asserted that the terms "AFFORDABLE PAPERS" are still generic and commonly used, it has concluded that there is no likelihood of confusion or false association between the disputed domain name and the Complainant's trademark and its business, unless the Complainant proves otherwise...It is possible that the Respondent has been aware of Complainant's trademarks, domain names and business in general; however, this does not automatically mean that it has registered the disputed domain name in bad faith in order to "free ride" on the Complainant's or its trademarks' reputation, since the domain name is descriptive of the services that the Complainant has been offering".

However, the present dispute is different in the following ways:

- The disputed domain name was registered after the registration of the word trademark in the US;
- The website by the disputed domain name (unlike the website of the respondent in CAC Case No. 102537) indeed uses a similar design, i.e. similar colors and such use may create an association with the Complaint's own website and Complainant's services;
- Use by the Respondent on its website of the designation "Affordable Papers"; and
- Taking into account the above it is indeed highly likely that the Respondent targeted the Complainant.

The Panel finds that evidence available in this case demonstrate the bad faith of the Respondent.

The Panel needs to assess each case on its own merits and the totality of facts and circumstances in this particular case indicates the bad faith of the Respondent, in particular:

- The fact that the disputed domain name was registered after the registration of the disputed domain name;
- The content of the website by the disputed domain name and similarity with the Complainant's design;
- Use by the Respondent of the exact terms "Affordable Papers" throughout the website that are identical with the Complainant's word trademark rather than "Affordable Paper" or "Affordable Paper Company" and
- Failure of the Respondent to respond and present his arguments.

Taking into account all of the above, it appears that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark.

The Panel notes that the applicable standard of proof in UDRP is “balance of probabilities”.

That means a party should demonstrate to a panel’s satisfaction that it is more likely than not that a claimed fact is true and the panels may draw certain inferences in light of the particular facts and circumstances of each case e.g., where a particular conclusion is prima facie obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent (see par. 4.2 of WIPO Overview 3.0).

The balance of probabilities in this case is in the Complainant's favor.

Therefore, the Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AFFORDABLEPAPER.COMPANY**: Transferred

PANELLISTS

Name	Igor Motsnyi / Mocni Konsalting doo
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DATE OF PANEL DECISION	2021-12-17
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Publish the Decision
