

Decision for dispute CAC-UDRP-104147

Case number	CAC-UDRP-104147
Time of filing	2021-11-19 09:21:22
Domain names	affordablepapers4u.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Writera Limited
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Respondent

Organization	TrafficTerminal
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OTHER LEGAL PROCEEDINGS

The Panel found that there were proceedings related to the disputed domain name before the Czech Arbitration Court case no. 102537. In these proceedings, the company One Freelance Limited (previous owner of the US trademark no. 5751325 "AFFORDABLE PAPERS") claimed transfer of the disputed domain name from the Respondent relying on similar facts and legal arguments. Given the difference of Complainants this is not a re-filed case in the strict sense, although the fact that the Complainant did not mention this previous case where the complaint was rejected in the present complaint is, in the opinion of the Panel, clear indicator of abuse of these proceedings by the Complainant pursuant to paragraph 15(e) of the Rules for Uniform Domain Name Dispute Resolution Policy (please see also below).

IDENTIFICATION OF RIGHTS

The Complainant is the owner of United States trademark "AFFORDABLE PAPERS" applied for 25 October 2018 and registered on 26 February 2019, registration number 5751325 ("Complainant's Trademark").

The disputed domain name was registered on 30 May 2017.

FACTUAL BACKGROUND

As the Respondent did not file any response to the Complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

- (a) The Complainant, provides through its website available under the domain name <affordablepapers.com> services consisting primarily of on-line custom essay writing.
- (b) The Complainant is the owner of Complainant's Trademark.
- (c) The website operated under the disputed domain name is currently used by the Respondent for promoting and offering services similar to those of the Complainant, i.e. custom on-demand essay writing.

The Complainant seeks transfer of the disputed domain name to Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

(a) The "AFFORDABLE PAPERS" denomination has acquired distinctiveness and reputation through long public use since 2006 and it has acquired secondary meaning attributable to the Complainant as an unregistered trademark. Subsequently, Complainant's rights to the "AFFORDABLE PAPERS" denomination (as to an unregistered trademark) predates registration of the disputed domain name despite a fact that the Complainant's Trademark was applied for only thereafter. The disputed domain name contains "AFFORDABLE PAPERS" word element, and it is thus almost identical (i.e. confusingly similar) to the Complainant's trademark. Adding a suffix "4U" (having a meaning "for you") is not sufficient to escape confusing similarity between the disputed domain name and the Complainant's Trademark.

(b) The Respondent has not been commonly known by the disputed domain name. The Complainant has not authorized, permitted or licensed the Respondent to use Complainant's trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by the disputed domain name. On the contrary, the disputed domain name was used for attracting internet users to services provided by the Respondent and this is why it is free riding on reputation of the Complainant's trademark and its business. Therefore, the Respondent has no legitimate interest in the disputed domain name.

(c) The disputed domain name was used for attracting internet users to services provided by the Respondent, which are identical to those provided by Complainant, and therefore it is free riding on reputation of the Complainant's trademark and its business. Also, no answer was provided after the cease and desist note and the emails of the website seems to be inactive making it impossible to connect with the owners. As a result, the disputed domain name has been registered and is being used in bad faith by the Respondent.

RESPONDENT:

Respondent provided no response to the complaint.

RIGHTS

The Complainant has not 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 not 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 not 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

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements to obtain an order that the disputed domain name should be transferred or revoked:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(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.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in these proceedings.

RIGHTS

The issue of identity / confusing similarity was thoroughly discussed in the previous proceedings related to the disputed domain name (CAC case no.102537) which found that the disputed domain name is not confusingly similar to Complainant's Trademark due to generally low distinctiveness of Complainant's Trademark. On the other hand, the Panel in CAC case no. 104149 took a different view finding that the domain name <affordablepaper.company> is confusingly similar to the Complainant's Trademark.

However, given that (as discussed below) the Panel in this case found that the Complainant failed to establish lack of Respondent's rights or legitimate interest in the disputed domain name and bad faith of the respondent upon registration and use of the disputed domain name, the Panel did not examine this issue further.

NO RIGHTS OR LEGITIMATE INTERESTS / BAD FAITH OF THE RESPONDENT

The Complainant provides a "cheap essay writing service: original papers for \$7 per page" as advertised on Complainant's website under the domain name <affordablepapers.com>. Under the disputed domain name, there appears to be a website offering similar services to those of the Complainant, i.e. writing of academic papers for a fee. The Panel emphasizes that this type of service and the way it is utilized by undoubtedly vast majority of its users (i.e. having someone else write a paper which the student or scientist then submits as his own work) is highly unethical in most academic settings and illegal in many jurisdictions, as there is a clear requirement that each student or scientist should write his own papers.

Therefore, the question arises how should such unethical and illegal nature of the services provided by the Complainant be reflected in these proceedings as in domain name disputes there is no established application of the "contra bonos mores" doctrine used in several jurisdictions to deny enforcement of a claim which is apparently contradicting shared basic moral values of society. Nevertheless, in the opinion of the Panel, this means that the circumstances relating to the (lack of) legitimate interest and bad faith of the Respondent have to be interpreted against the Complainant based on simple logic that someone who acts unethically (and illegally) is hardly in position to require ethical (and legal) conduct of others.

The Panel found that there is a website under this disputed domain name advertising similar (and similarly unethical and illegal) services as those of the Complainant. Therefore, using the same low moral bar the Complainant set by providing its services in the first place the Respondent has the same "legitimate" interest to the disputed domain name and is on the same level of bad faith as the Complainant in relation to its domain name <affordablepapers.com>. Also, the Panel noted that the disputed domain name was registered prior to application for Complainant's Trademark which casts further significant doubt on Complainant's position in this dispute.

Therefore, the Panel concludes that the Complainant failed to show that the Respondent lacks any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy) and that the disputed domain name has been registered and is being used in bad faith by the Respondent (within the meaning of paragraph 4(a)(iii) of the Policy).

BAD FAITH OF THE COMPLAINANT

Moreover, the Panel also found that the complaint has been brought in bad faith pursuant to paragraph 15 (e) of the Rules for Uniform Domain Name Dispute Resolution Policy. The fact that the Complainant (i) has brought the complaint based on the trademark which is used for unethical and illegal purposes by the Complainant and which was registered later than the disputed domain name and (ii) "conveniently" omitted to mention the previous CAC Case no. 102537 where the claim of the Complainant's legal predecessor based on the same facts and legal arguments was denied, constitutes, in the opinion of the Panel, clear evidence of the abuse of the UDRP proceedings by the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. AFFORDABLEPAPERS4U.COM: Remaining with the Respondent

PANELLISTS

Name	Michal Matějka
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DATE OF PANEL DECISION 2021-12-26

Publish the Decision