

Decision for dispute CAC-UDRP-104114

Case number	CAC-UDRP-104114
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Time of filing	2021-12-02 09:19:10
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Domain names	LNTESA-SPA.COM
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Case administrator

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

Organization	Intesa Sanpaolo S.p.A.
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Complainant representative

Organization	Intesa Sanpaolo S.p.A.
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Respondent

Name	Ciro Ignoto
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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 marks, amongst others:

- International trade mark registration no. 920896, dated 7 March 2007, for the word mark INTESA SANPAOLO, in classes 9, 16, 35, 36, 38, 41 and 42 of the Nice Classification;
- International trade mark registration no. 793367, dated 4 September 2002, for the word mark INTESA, in class 36 of the Nice Classification;
- European Union trade mark registration no. 5301999, dated 18 June 2007, for the word mark INTESA SANPAOLO, in classes 35, 36 and 38 of the Nice Classification; and
- European Union trade mark registration no. 12247979, dated 5 March 2014, for the word mark INTESA, in classes 9, 16, 35, 36, 38, 41 and 42 of the Nice Classification;

(hereinafter, the Complainant's trade marks; the Complainant's trade mark INTESA; or the Complainant's trade mark INTESA

The Complainant's contentions can be summarised as follows:

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

The Complainant is the leading Italian banking group and a major player in the European financial arena, whose company name resulted from the merger in 2007 between two Italian banking groups, namely Banca Intesa S.p.A. and Sanpaolo IMI S.p.A. The Complainant currently offers its services to approximately 13.5 million customers worldwide, with an international network present in 25 countries.

In addition to the trade marks mentioned above and numerous other trade marks, the Complainant informs that it is also the owner of various domain names which contain the marks INTESA and INTESA SANPAOLO, most notably <intesasanpaolo.com>, which was registered in 2006.

The disputed domain name <ltesa-spa.com> was registered on 7 February 2021.

The Complainant claims that the disputed domain name is identical, or at least confusingly similar, to the Complainant's trade marks INTESA and INTESA SANPAOLO. The disputed domain name merely substitutes the first letter "i" with the letter "l" in the word "Intesa", and contains the abbreviation "SPA" in the string, which stands for "Società per Azioni" or "Limited Company" in the English language and is the Complainant's legal form.

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

The Complainant states that the Respondent has no rights in the disputed domain name, and that any use of the trade marks INTESA SANPAOLO and INTESA has to be authorised by the Complainant. The Respondent is not authorised or licensed by the Complainant in any way, nor is the Respondent known by the disputed domain name.

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

Registration

The Complainant states that the trade marks INTESA SANPAOLO and INTESA are well-known and distinctive. The Complainant further states that, given the distinctiveness and reputation of the Complainant's trade marks, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade marks INTESA SANPAOLO and INTESA.

Use

The Complainant avers that the disputed domain name is held passively, and that the Respondent has intentionally used it to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of that website (paragraph 4(b)(iv) of the UDRP Policy).

The Complainant claims that the disputed domain name is not used for any bona fide offerings in so far as it is connected to a website which has been blocked by Google Safe Browsing through a warning page. The Respondent's main purpose with the disputed domain name is for "phishing" financial information in an attempt to defraud the Complainant's customers.

In the alternative, the Complainant claims that the Respondent's aim with the registration of the disputed domain name might be

to resell it to the Complainant, which is evidence of registration and use of the disputed domain name in bad faith (paragraph 4(b)(i) of the UDRP Policy).

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 trade marks in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

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.

I. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in “INTESA” since 2002.

The disputed domain name is <ltesa-spa.com>, and the Complainant's trade mark is INTESA.

The Panel notes that the Complainant's trade mark INTESA is nearly wholly incorporated into the disputed domain name, the mere differences being the substitution of the letter "i" with the letter "l" in the word "ltesa", and the addition of the abbreviation "SPA", which stands for "Società per Azioni" (in the Italian language) or "joint stock company" in the English language (Source: Collins dictionary <https://www.collinsdictionary.com/>) which coincidentally or not, is the Complainant's legal form. In the Panel's view, these differences have no material impact on the confusing similarity assessment, such that the disputed domain name clearly evokes the Complainant's trade mark INTESA.

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

II. Rights or Legitimate Interests

The Respondent has defaulted in these UDRP proceedings. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (UDRP Rule 14 (b)).

The Panel notes that the Complainant firmly denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant 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 Respondent has submitted no evidence to refute any of the Complainant's assertions. On balance, the Panel considers the available evidence to lend credence to the Complainant's contentions.

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

III. Registered and Used in Bad Faith

Registration

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

- The Complainant has been in operation since at least 2007, with a major presence in Italy, where the Respondent appears to be based;
- The Complainant operates its activities through the domain name <intesasanpaolo.com>, which was registered in 2006;
- The disputed domain name <ltesa-spa.com> was registered on 7 February 2021; and
- UDRP panels have consistently found that a typo of a widely-known trade mark can by itself create a presumption of bad faith (WIPO Panel Views on Selected UDRP Questions, Third Edition, paragraph 3.1.4 ("WIPO Jurisprudential Overview 3.0")), and the Panel accepts that the Complainant's trade marks are widely known.

Use

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 its website 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 the respondent’s website or location or of a product or service on the respondent’s website or location.”

At the time of writing, the disputed domain name does not resolve to an active website (the Respondent’s website).

The Panel refers to paragraph 3.3 of the WIPO Jurisprudential Overview 3.0 to determine whether or not there has been bad faith use of the disputed domain name. UDRP panels have found that the non-use of a domain name may support a finding of bad faith under certain circumstances. Factors that have supported such finding include, but are not limited to (i) the degree of distinctiveness or reputation of the complainant’s trade mark; (ii) the respondent’s default; (iii) the respondent’s concealing of its identity; and (iv) the implausibility of any good faith use to which the domain name may be put.

The Panel considers that all four factors listed above are relevant and present in these UDRP proceedings. In particular, the Panel notes the Complainant’s claim that the Respondent’s website has been used for fraudulent purposes. The Panel cannot disregard this possibility given the above findings, and therefore views as implausible any good faith use of the disputed domain name.

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

In view of the above finding, the Panel will not make a determination on the Complainant’s alternative claim under paragraph 4(b)(i) 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. **LNTESA-SPA.COM:** Transferred

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION	2022-01-06
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Publish the Decision	
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