

Decision for dispute CAC-UDRP-104229

Case number	CAC-UDRP-104229
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Time of filing	2021-12-09 09:12:23
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Domain names	detsche-boerse.com
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Case administrator

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

Organization	Deutsche Börse AG
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Complainant representative

Organization	Grünecker Patent und Rechtsanwälte PartG mbB
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Respondent

Name	JASON ROE
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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

Complainant owns rights in the “DEUTSCHE BÖRSE” signs and shows valid trademarks rights as follows:

- German trademark registration DEUTSCHE BÖRSE No. 30648274 of August 4, 2006 for goods and services in classes 36, 9, 16, 35, 38, 41, 42 and 45;
- German trademark registration DEUTSCHE BÖRSE No. 39404080 of November 29, 1994 for goods and services in classes 36, 9, 16, 35 and 42;
- European Union trademark DEUTSCHE BÖRSE No. 5276738 of August 4, 2006 for goods and services in classes 9, 16, 35, 36, 38, 41 and 42;
- European Union trademark DEUTSCHE BÖRSE No. 000886481 of July 24, 2000 for goods and services in classes 9, 16, 35, 36, and 42; and

- International trademark registration DEUTSCHE BÖRSE Group No. 917734, of February 15, 2007 for goods and services in classes 9, 16, 35, 36, 41, 42 and 45.

Complainant also operates in particular the website <https://www.deutsche-boerse.com/>.

FACTUAL BACKGROUND

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

Complainant is an international exchange organisation and innovative market infrastructure provider.

Complainant is also a transaction service provider, which affords international companies and investors access to global capital markets by means of advanced technology.

Its product, service and technology portfolio cover the entire chain of financial markets process.

Complainant has customers in Europe, the USA and Asia, who are serviced by more than 3,200 employees at locations in Germany, Luxemburg, Switzerland and the USA, as well as at representative offices in London, Paris, Chicago, New York, Hong Kong, Dubai, Moscow, Beijing, Tokyo and Singapore. Complainant is the leading company in its field of business in Germany.

Respondent is Jason ROE, located in the US.

On October 18, 2021, Respondent registered the disputed domain name <detsche-boerse.com>.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

- Complainant argues that the disputed domain name is confusingly similar to its trademarks.

Complainant considers that the dispute domain name is confusingly similar to its DEUTSCHE BÖRSE registered trademarks.

Complainant states that its DEUTSCHE BÖRSE trademarks are distinctive.

Additionally, Complainant contends that the omission of the third character "u" and the transcription of the "Umlaut" as "oe" are not sufficient to escape the finding that the disputed domain name is confusingly similar to its trademark.

Complainant considers that the domain name <detsche-boerse.com> is a typical case of typosquatting.

- Complainant further asserts that Respondent does not have any rights or legitimate interests in the disputed domain name.

First, Complainant highlights that the Respondent used a privacy or proxy registration services in particular to obscure its identities.

Complainant highlights that Respondent used the disputed domain name for sending phishing e-mails with the apparent

intention to obtain personal information of the recipient.

In support of its claims, Complainant submitted a screenshot demonstrating that an e-mail was sent, allegedly by Respondent, posing as Complainant's CEO.

Furthermore, Complainant asserts that Respondent was not granted a license or an authorization to register the disputed domain name.

- Complaint finally comes down to the conclusion that Respondent's registration and use of the disputed domain name amounts to bad faith.

Complainant maintains that Respondent used the disputed domain name for fraudulent purposes in sending emails to impersonate Complainant's CEO and most likely to obtain personal information from the day following the disputed domain name registration.

Complainant recalls that the use of a confusingly similar, deceptive domain name for an e-mail scam has previously been found by panels to be sufficient to establish that a domain name has been registered and used in bad faith.

Besides, Complainant believes that the fact that Respondent concealed its identity is also a factor to retain bad faith.

RESPONDENT:

Respondent did not provide any response to the complaint, and is therefore in default.

RIGHTS

Complainant shown it has valid trademark rights in the "DEUTSCHE BÖRSE" sign.

The Panel considers that Complainant's trademark rights in the DEUTSCHE BÖRSE sign are established.

The Panel also agrees that the disputed domain name is confusingly similar to the Complainant's DEUTSCHE BÖRSE trademarks, the omission of the third character "u" and the "Umlaut" that is transcribed as "oe" do not permit to dismiss the likelihood of confusion with the DEUTSCHE BÖRSE trademarks.

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

Complainant shall make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name, under Policy 4(a)(ii). The burden of proof then shifts to Respondent. This standard and burden of proof have been established through continuous case law, see LESAFFRE ET COMPAGNIE v. Tims Dozman, Case No. 102430 (CAC, April 2nd, 2019) "The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).".

Complainant asserts that Respondent used of privacy or proxy registration services and that the disputed domain name is not connected to an IP address to obscure its identity.

Complainant asserts that Respondent is not commonly known under the disputed domain name, and that Complainant never

granted any authorization to Respondent to use Complainant's trademarks.

In addition, it can be highlighted that Respondent did not reply to the complaint. Previous panels have held that such mutism from the Respondent's part was proof that Complainant and Respondent had no relation and that Respondent is not commonly known under the disputed domain name (see FILEHIPPO S.R.O. v. whois agent, Case No. 102279 (CAC January 31, 2019), "In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.").

Therefore, the Panel concludes that Complainant has made a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name and has therefore satisfied Policy 4(a)(ii).

BAD FAITH

Complainant argues that the fraudulent use by the Respondent of the domain name in a scam scheme with a misused identity showed by an e-mail screenshot are sufficient to establish that a domain name has been registered and is being used in bad faith.

Complainant demonstrates that Respondent used the disputed domain name to impersonate Complainant's CEO, Mr. Theodor Weimer, as well as Mr. Gregor Pottmeyer, the Chief Financial officer of the Complainant.

Such use of the domain name demonstrates that Respondent was aware of Complainant at the time of the registration of the domain name, which shows that said registration has been done in bad faith. In addition, such use cannot be considered as good 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

Complainant holds trademark rights for the DEUTSCHE BÖRSE sign. The disputed domain name is confusingly similar to Complainant's trademarks and constitutes a typosquatting of Complainant's trademarks. Respondent failed to establish legitimate rights or legitimate interests in the disputed domain name. Complainant has established that Respondent registered and uses the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **DETSCH-BOERSE.COM**: Transferred

PANELLISTS

Name	Nathalie Dreyfus
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DATE OF PANEL DECISION	2022-01-14
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