

Decision for dispute CAC-UDRP-104295

Case number	CAC-UDRP-104295
-------------	------------------------

Time of filing	2022-02-14 10:26:18
----------------	----------------------------

Domain names	essayshark.review
--------------	--------------------------

Case administrator

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

Complainant

Organization	FrogProg Limited
--------------	-------------------------

Respondent

Name	ALIAKSANDR ZHARNASEKAU
------	-------------------------------

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

The Complainant relies on the following trademarks:

- EssayShark, European registration No. 014969083, filed on 31 December 2015 and registered on 26 May 2016 for services in classes 41 and 42;

- EssayShark, US registration No. 5021885, filed on 31 December 2015 and registered on 16 August 2016, for services in class 41, claiming first use in commerce since 4 October 2011; and

- EssayShark, US registration No. 5021887, filed on 31 December 2015 and registered on 16 August 2016 for services in class 41, claiming first use in commerce since 4 October 2011.

The Complainant is also the owner of the domain name <essayshark.com> registered in October 2011.

Furthermore, the Complainant relies on the unregistered trademark EssayShark used since the year 2011 for services in classes 41 and 42.

FACTUAL BACKGROUND

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

The Complainant does not spend much words on its field of activity. The Complainant states that he has several registered EssayShark trademarks since 2016.

The disputed domain name was registered on 22 June 2020 .

The Complainant states that as the Registrant is an owner of a competitive website and had not been previously known by the disputed domain name, the registration of a domain name is confusingly similar to essayshark.com. However, in the view of Complainant, Respondent has intentionally attempted to attract, for commercial gain, internet users to the website by creating a likelihood of confusion with its mark. The disputed site <essayshark.review> redirects users to the site extraessay.com, where the list of services offered matches the list of services of the Complainant.

In the present case, the trademark EssayShark is in the view of Complainant clearly recognizable in the disputed domain name. The addition Complainant states that the generic Top-Level Domain “.review” does not prevent a finding of confusing similarity with the trademarks of Complainant. The gTLD “.review” does not serve to dispel the confusing similarity of the disputed domain name with Complainant's trademark. Top-Level Domains generally are disregarded when evaluating the identity or confusing similarity of the complainant's mark to the disputed domain name under paragraph 4(a)(i) of the Policy, irrespective of any ordinary meaning that might be ascribed to the TLD.

The disputed domain name was in the view of Complainant also registered and is being used in bad faith. The Respondent registered the disputed domain name to disrupt the Complainant's business by diverting Internet users who are searching for the Complainant's product and leading them away from the Complainant's website, and by preventing the Complainant from registering this domain name. The registration indicates in the view of Complainant a pattern of bad faith behaviour. Complainant's rights in his EssayShark trademark predate the registration of the disputed domain name. The disputed domain name reflects Complainant's EssayShark trademark in its entirety, together with gTLDs that imply a connection to Complainant. On this evidence, Respondent was aware of Complainant when of registering the disputed domain name.

Complainant states, that Respondent has demonstrated bad faith by using the disputed domain name to redirect Internet users to the website of Complainant's competitor. Moreover, Respondent has concealed his identity and failed to respond to Complainant's cease-and-desist letter. Respondent uses keywords that include Complainant trademark EssayShark and Complainant domain name essayshark.com on the dispute site <essayshark.review>. All these factors support in the view of Complainant a holding of bad faith registration and use of the disputed domain name.

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

1. Confusing similarity (paragraph 4(a)(ii) of the Policy)

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

From the evidence provided, and not contested by the Respondent, the Complainant owns a number of trademark registrations since 2016 for the trademark EssayShark.

The disputed domain name is identical to Complainant trademark EssayShark, incorporating it in its entirety. The generic Top-Level Domain “.review” does not differentiate it from Complainant trademark.

The Panel agrees with the Complainant that the disputed domain name is identical to the Complainant's trademark EssayShark.

Thus, the Panel is satisfied that the first requirement under the Policy has been met.

2. The Respondent's rights or legitimate interests in the disputed domain name (paragraph 4(a)(ii) of the Policy)

Next, the Panel finds, that the Respondent lacks rights or legitimate interest in the disputed domain name. Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name.

The Complainant has stated that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant also stated that it has not licensed nor allowed the Respondent to use the disputed domain name.

The Panel finds that the Complainant has established a prima facie case in this regard, inter alia, due to the fact that the Complainant has not licensed or otherwise permitted the Respondent to use the EssayShark trademark.

The Respondent had not submitted a Response and did not provide any evidence to show any rights or legitimate interests in the disputed domain name that is sufficient to rebut the Complainant's prima facie case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Panel finds for the Complainant under paragraph 4(a)(ii) of the Policy.

3. Bad Faith (paragraph 4(a)(iii) of the Policy)

Respondent uses the disputed domain name to redirect to another website, extraessay.com, what happens when you switch to any of the sections of the site essayshark.review. Only the homepage is available at essayshark.review. An attempt to switch to any other section of the site leads to a “href=” redirect to extraessay.com. The disputed domain name redirects to the website “extraessay.com”, which is the Complainant's competitor, because the list of services on the site is the same as Complainant's, further supporting the finding that Respondent is clearly aware of Complainant and the ESSAYSHARK trademark.

The Respondent is targeting the Complainant and intentionally attempted to attract, for commercial gain, internet users to the Respondent's website by creating a likelihood of confusion with Complainant trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on the website.

Furthermore, Respondent did not reply to a cease-and-desist letter of Complainant.

Thus, the Panel is satisfied that also the third and last condition under the Policy has been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ESSAYSHARK.REVIEW**: Transferred

PANELLISTS

Name	Jan Christian Schnedler, LL.M.
------	--------------------------------

DATE OF PANEL DECISION	2022-03-10
------------------------	------------

Publish the Decision