

Decision for dispute CAC-UDRP-104301

Case number CAC-UDRP-104301

Time of filing 2022-02-04 12:52:38

Domain names essayshark.ws

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization FrogProg Limited

Respondent

Name Yining Gao

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 is the owner, amongst others, of the following trademark registrations for ESSAYSHARK:

- European Union trademark registration No. 014969083 for ESSAYSHARK (figurative mark), filed on December 31, 2015 and registered on May 26, 2016 in classes 41 and 42;

- United States trademark registration No. 5021885 for ESSAYSHARK (word mark), filed on December 31, 2015 and registered on August 16, 2016 in international class 41; and

- United States trademark registration No. 5021887 for ESSAYSHARK (figurative mark), filed on December 31, 2015 and registered on August 16, 2016 in international class 41.

FACTUAL BACKGROUND

The Complainant provides online writing services to students and writers. Its services include online writing, rewriting, editing, proofreading services in the field of academic paper assistance.

The Complainant is the owner of the domain name <essayshark.com>, which was registered on November 13, 2009 and is used by the Complainant to promote its services under the trademark ESSAYSHARK.

The disputed domain name <essayshark.ws> was registered on July 9, 2019 and resolves to a website reproducing the Complainant's trademark ESSAYSHARK and content taken from the Complainant's website "essayshark.com" – including the Complainant's company information - and promoting essay writing services.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant states that the disputed domain name <essayshark.ws> is identical to its trademark ESSAYSHARK as it reproduces the trademark in its entirety with the sole addition of the gTLD “.ws”, which is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name because it is not related in any way with the Complainant, the Complainant does not carry out any activity for, nor has any business with the Respondent and the Respondent is not commonly known by the disputed domain name.

The Complainant further contends that the Respondent will never be capable of using the disputed domain name for a legitimate purpose as the goodwill of the Complainant’s trademark ESSAYSHARK acquired through such a long and extensive use on the market and the way the Respondent started to use the disputed domain name in connection with the associated website results into the situation in which members of the public will always assume that there is an association between the Respondent and the Complainant and/or its trademark.

With reference to the circumstances evidencing bad faith, the Complainant further highlights that the Respondent deliberately registered the disputed domain name, incorporating the Complainant’s trademark, to disrupt the Complainant’s business, by diverting internet users to its website whilst preventing the Complainant from reflecting its trademark in a corresponding domain name.

The Complainant highlights that the list of services provided on the website to which the disputed domain name resolves coincides with the ones of the Complainant and states that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademark.

The Complainant further highlights that the Respondent failed to respond to its cease-and-desist letter and did not provide any good reason to justify its registration and use of the disputed domain name, which is a further indication of the Respondent’s bad faith.

RESPONSE

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. The Panel finds that the disputed domain name is identical to the Complainant's trademark ESSAYSHARK as it reproduces the trademark in its entirety with the mere addition of the country-code Top Level Domain ".ws", which can be disregarded for the purpose of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy.

2. With reference to the Respondent's rights or legitimate interests in the disputed domain name, the Panel finds that the Complainant has made a prima facie case and that the Respondent, by failing to submit a Response, has failed to provide any element from which a Respondent's right or legitimate interest in the disputed domain name could be inferred.

Indeed, the Complainant stated that the Respondent is not related in any way with the Complainant, that the Complainant does not carry out any activity for, nor has any business with the Respondent.

In addition, there is no evidence that the Respondent, whose name is Yining Gao according to the Whois records, might be commonly known by the disputed domain name.

The Panel also finds that the Respondent, by redirecting the disputed domain name to the website described above, offering the same type of services as the Complainant and reproducing the Complainant's trademark and content taken from the Complainant's official website, is not making a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name.

3. As to bad faith at the time of the registration, the Panel finds that, in light of the prior registration and use of the trademark ESSAYSHARK by the Complainant in connection with its writing services and considering the identity of the disputed domain name with such trademark, the Respondent was more likely than not aware of the Complainant's trademark at the time of registration.

In view of the use of the disputed domain name made by the Respondent, to redirect users to a website offering the same kind of services as the Complainant whilst reproducing the Complainant's trademark and content taken from the Complainant's website, the Panel finds that the Respondent was indeed well aware of the Complainant's trademark and registered the disputed domain name with such trademark in mind.

The Panel finds that the Respondent, by redirecting the disputed domain name to the website described above, has intentionally attempted to attract internet users to its website for commercial gain, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of its website and services, according to paragraph 4(b)(iv) of the Policy.

The Panel also finds that the Respondent's use of the disputed domain name shows the Respondent's intent to disrupt the Complainant's business according to paragraph 4(b)(iii) of the Policy.

As additional circumstances evidencing the Respondent's bad faith, it has failed to reply to the Complainant's cease-and-desist letter and to file a Response to rebut the Complainant's contentions.

Therefore, the Panel finds that the Respondent registered and is using 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. ESSAYSHARK.WS: Transferred

PANELLISTS

Name	Luca Barbero
------	--------------

DATE OF PANEL DECISION 2022-03-17

