

Decision for dispute CAC-UDRP-100207

Case number	CAC-UDRP-100207
-------------	------------------------

Time of filing	2010-12-06 09:47:05
----------------	----------------------------

Domain names	YOUGLASS.COM
--------------	---------------------

Case administrator

Name	Tereza Bartošková (Case admin)
------	---------------------------------------

Complainant

Organization	AGC Glass Europe
--------------	-------------------------

Complainant representative

Organization	Ulys Law firm
--------------	----------------------

Respondent

Organization	Dezon Limited
--------------	----------------------

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the domain name in dispute.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the nominative Community trademark No. 5717525 which was registered on 28 November 2007. It is also the registrant for the yourglass.com domain name.

FACTUAL BACKGROUND

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

AGC Flat Glass Europe ("AGC") is the European branch of AGC Glass, the world's largest producer of flat glass with branches and plants worldwide. The company produces and processes flat glass for the construction industry (external glazing and indoor decorative glass), the automotive industry, the solar industry and specialist industries (transport, domestic appliances and high-tech innovations).

The company does business under a large number of trademarks and domain names. One of its most important trademarks is "YOURGLASS". AGC Flat Glass Europe is the owner of the YOURGLASS Community nominative trademark No. 5717525 filed on 15 February 2007 and registered on 28 November 2007. It covers the European Union territory for Nice classes 19, 21, 38 and 42. Thanks to longstanding and wide use, the trademark YOURGLASS has acquired great fame and is widely known

throughout the European Union.

AGC Flat Glass Europe's portal www.yourglass.com acts as a flagship website for AGC.

The Complainant is also the registrant of numerous generic and country code level domain names for “yourglass”.

In September 2010, the Complainant was informed that an entity named “Dezon Ltd.”, apparently based in London, had registered the domain names “YOUGLASS.COM” and “YOUGLASS.CO.UK” on 9 July 2009. These domain names were used in connection with a web site that proposed “a full range of float glass designed for any indoor or outdoor applications”; and “glass for architects, interior designers, building companies or kitchen/bathroom fitters”. To illustrate this offering of float glass, the Complainant adduced website printscreens showing numerous pictures of glass construction, stating that these were directly extracted from AGC's e-photo library, i.e. AGC's database of copyright protected photographs.

Dezon Ltd. is not an UK entity working in the glass industry. It appears from www.dezon.co.uk that it is an IT consulting firm which offers consulting, desktop and network support services to businesses.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

SUMMARY OF THE COMPLAINANT'S CONTENTIONS:

1. The domain name registered by Dezon Ltd. is confusingly similar to AGC's trademark YOURGLASS. In particular, the registration amounts to a mere typosquatting of the AGC's trademark in order to divert traffic (YOUGLASS – YOURGLASS). Apart from the subtraction of a single character (the letter “r” in “yourglass”), the Domain is identical to AGC's domain name “yourglass.com” and the mark registered under Community Trademark No. 5717525, “YOURGLASS”. The fact that the letter “r” is not reproduced in the disputed domain name is of no importance visually or phonetically, as stated in a previous decision under the URDP (WIPO Case No. D2004-0143 *Nature et Découvertes vs. Découverte 3 vallée Ballon d'Alsace*), and cannot avoid the risk of confusion between the trademark of AGC and the domain name in dispute. Addition of “.com” does not impact on the analysis of whether a disputed domain name is identical or confusingly similar to AGC's Trademark (WIPO Case No. 2006-1499 *Priority One Financial Services Inc. v. Michael Cronin*; ADR.eu Case No. 100180, *Organization CPS Color Group Oy v. Organization Hero Products Group <corob.com>*).
2. Dezon Ltd. has no right or legitimate interest in respect of the domain name youglass.com. It is not currently and has never been known under the name “YOUGLASS”, but operates in a quite distinct field, as an IT consulting firm, so excluding per se being engaged in offering float glass. Dezon Ltd. has hence no trademark rights in regard to the sign “YOUGLASS” or in relation to any related signs.

AGC has never given any authorization to Dezon Ltd to make any use or apply for registration of the domain name in dispute and moreover it has never given any authorization to reproduce on its website protected pictures from AGC's database representing glass construction samples. To AGC's knowledge, there is no connection or affiliation between the parties which could authorize Dezon Ltd to use or apply for any domain name incorporating AGC's trademark or to reproduce AGC's copyrighted pictures. Accordingly, Dezon Ltd was not entitled to register the domain name, or to use it as a company name, or to display AGC's copyrighted pictures on its website. This particular set of facts constituting trademark infringement and copyright infringement has bearing on whether it is an abusive registration.

Contact data related to “YouGlass”, which the Respondent included on the site it established using the domain name in dispute, do not refer to any legal entity. The term is only associated with an address identical to Dezon Ltd's. Apart from this single website page, the term “YOUGLASS” is not used in relation to the offering of glass products. Accordingly the Complainant concludes that the use of “YOUGLASS” as a contact name on one website page has the sole aim of justifying a legitimate interest.

While there is no legitimate reason for Dezon Ltd to adopt the domain name in dispute, Dezon Ltd could not ignore the existence

of AGC and its well-known reputation and trademark in float glass when it filed application for registration of the domain name "youglass.com".

The Respondent does not use the domain name in connection with a bona fide offering of goods and services. The Respondent's only interest in the domain name seems to be its value as a typographical error in relation to AGC's domain name "yourglass.com" so as to divert, for commercial gain, visitors looking for the Complainant's services on the Internet. The confusion is maintained and accentuated by the reproduction by the Respondent on the main portal of pictures directly extracted from the AGC's database, in breach of AGC's copyright over these pictures.

The Respondent is not making "a legitimate, non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark".

Moreover, if a domain name is chosen because of the similarity to a name in which the third party complainant has an interest and if this is done in order to capitalize or otherwise take advantage of that similarity, this would not provide the registrant with a right or a legitimate interest in the domain name (WIPO Case No. D2007-0267, Express Scripts, Inc. v. Windgather Investments Ltd./Mr Cartwright; ADR.eu Case No. 100149 Amateri cz s.r.o v. Brian Muir). AGC's business under the "YOURGLASS" name is clearly reasonably large and has developed a reputation that Dezon Ltd. could not ignore, as proved by the fact that Dezon Ltd reproduced AGC's glass pictures on its main portal. Questions of intention – as to registration with the Complainant's mark in mind and as to use of the domain name in question in order to take unfair advantage of the mark's reputation – are matters for consideration under the criterion of bad faith and thus further consideration under the criteria of rights and legitimate interest can be dispensed with (ADR.eu Case No. 100149 Amateri cz s.r.o v. Brian Muir).

3. The above circumstances showing the Respondent's lack of rights or legitimate interest in the domain name in dispute also make it obvious that the domain name in dispute has been registered and is being used in bad faith.

The questions to be addressed in assessing bad faith registration and use are: (a) did the respondent register the domain name with the complainant's mark in mind and (b) has he then deliberately used the domain name to take unfair advantage of the reputation of the mark? Previous decisions under the UDRP have held that actual knowledge of the Complainant's trademark and activities at the time of the registration of the disputed domain name may allow an inference of bad faith to be drawn (WIPO Case No. D2000-0226 Parfums Christian Dior v. Javier Garcia Quintas and Christian-dior.net; WIPO Case No. D2000-1409, Sony Kabushiki Kaisha v. Inja, Kil), notably if "it is inconceivable that the respondent could make any active use of disputed domain name without creating a false impression of association with the Complainant. The Respondent was not authorized by the Complainant to use neither [sic] its mark nor the disputed domain name".

Given the (at least) European renown of the YOURGLASS trademark, there is no plausible scenario whereby Dezon Ltd could have registered the domain name in dispute without being aware of the AGC Flat Glass Europe's trademark and related domain names.

The use of a slight variation of AGC's trademark, which can be regarded as typosquatting, is further evidence of such knowledge. The Respondent intentionally registered a misspelled domain name variant of AGC's trademark which proves in itself its knowledge regarding this trademark. The fact that Dezon Ltd has further reproduced AGC's pictures of glass to illustrate its main portal also supports this evident knowledge. Such graphical/phonetical identity between the signs ("YOUGLASS" – "YOURGLASS") in any case itself engenders risk of confusion between the signs. The Respondent would thereby wrongfully benefit by the distinctiveness, fame and commercial goodwill obtained by the wide use of AGC's sign "YOURGLASS".

The Respondent has taken no precautions to avoid this confusion or trademark infringement. On the contrary, the consumer's confusion is maintained and accentuated by the reproduction of AGC's pictures directly on Dezon Ltd's main portal website. By creating a likelihood of confusion with AGC's activities, the Respondent has taken unfair advantage of the Complainant's European trademark brand and reputation, so giving rise to an inference of bad faith, alongside the intention to attract, for commercial use, Internet users to the Respondent's website. Typosquatting itself gives rise to such an inference. (ADR.eu Case No. 100069 BACCARAT SA v. Azlo Ltd <baccaratcom.com>). Internet users can easily make typing errors and so be directed to

the Respondent's website which they will believe to be the Complainant's website or at least a website endorsed by it.

Under all these circumstances, the Respondent has been shown to have made a registration and to have used the domain name in dispute in bad faith, clearly falling within the example given in paragraph 4 (b)(iv) of the Policy.

RESPONDENT: NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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

This is a case of alleged typosquatting, that is, of deliberate misspelling in a registered domain name likely to cause confusion among Internet users and thereby divert their traffic to a site they would not have intended to visit.

Regarding the facts of the case, the Panel makes reference to the factual background and to the summary of the Complainant's contentions, given above. The Respondent has not made any submissions, so the Panel composed its summary of the factual background on the basis of the pertinent information provided by the Complainant.

Employing its discretion based on the evidence furnished by the Complainant, the Panel has established in addition that, at the time of preparing this Decision, the domain name in dispute was no longer used in conjunction with an active website; nor was youglass.co.uk in use (to which the Complainant makes reference as directing traffic to the youglass.com portal site). The Panel takes note of this withdrawal of content during a dispute resolution proceeding.

Against the background just given, the Panel is charged to apply the cumulative test regarding abusive registration and use of domain names under ICANN's Uniform Domain Name Dispute Resolution Policy. Its Paragraph 4 namely allows for transfer to a Complainant if (i) the domain name in question is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) the registrant has no rights or legitimate interests in respect of the domain name; and (iii) the domain name has been registered and is being used in bad faith.

In this case, there can clearly be no doubt, as regards criterion (i), that "youglass" is close in spelling to that of "YOURGLASS" registered to the Complainant, a world leader in float glass, as a trademark in the EU or that "youglass" is a confusingly similar domain name to the Complainant's trademark and its various "yourglass" domain names. Internet users could thus easily mistype "yourglass" as "youglass" and fail to realize they were being directed to the wrong site.

As regards criterion (ii), the facts available to the Panel disclose no rights that have been acquired by the Respondent in the name "youglass" given especially the circumstance of its similarity to "yourglass"; nor had the Respondent received any kind of authorization or encouragement from the Complainant that would have grounded rights or given rise to a legitimate interest. The

Complainant was unaware of the Respondent's use of "youglass" in domain names until September 2009 and had no reason to be aware of the Respondent because the Respondent is active in an entirely different area of activity, namely IT consulting. It was rather the Respondent which chose to associate itself specifically with float glass, the Complainant's area of activity for which it had trademark protection within the EU for "YOURGLASS".

There is evidence in this respect to suggest that the Respondent ought to have known that it had no rights or legitimate interests in registering and using the domain name in dispute.

This is furnished by screenshot images, supplied by the Complainant, of the Respondent's website page. These contain pictures for comparison with ones available on the Complainant's website. They reveal an identical photograph to one in what the Complainant avers is its collection of proprietary images. This evidence satisfied the Panel that the registrant must have been conscious, upon visiting the Complainant's youglass.com site or a related source in order to obtain the image in question, that it lacked entitlement or legitimacy in combining such material with such a confusingly similar name as "YOUGLASS". Use of that image on the website using the domain name in dispute thus necessarily placed the registration into doubt, because it in effect proclaimed failure to respect another's rights or legitimate interests in that other's area of activity (float glass) that were being exercised under a closely similar domain name expressing a registered trademark, namely youglass.com.

The Panel nevertheless remarks, for future reference, that it is incumbent upon a party to arbitral proceedings always to exercise proper skill in the formation of evidential links upon which it seeks to rely, most notably in presenting them with clarity. The Complainant in this case could have done more to present these evidential links more clearly.

As regards criterion (iii) of the UDRP cumulative test, UDRP Paragraph 4 (b) (iv) gives an example of bad faith by explaining to a Respondent that it exists where "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location".

In regard to this UDRP example, the Panel takes due note of the evidence referred to in relation to criterion (ii) regarding use of a third party's imagery on a site bearing almost the same domain name as the third party's youglass.com name. Such use of proprietary material from it by the Respondent, when combined with the confusing similarity of youglass.com to yourglass.com, is thus capable of indicating bad faith as to use of the domain name in dispute and as to why registration was most likely sought in the first place. The Panel also attaches some significance in this respect to the removal of the website content during dispute resolution proceedings.

Further, AGC's domain name and website youglass.com were manifestly of a kind to be the subject of intellectual property rights. By orienting its similarly named youglass.com site to the quite specialist field of float glass, the Respondent indicated a degree of understanding that would have been sufficient to alert the Respondent of the Complainant's place in that field and its rights.

Given this context, the Panel is satisfied that the inference may be drawn that the closeness between "youglass" and "yourglass" indicates that a misspelled domain variation of the Complainant's trademark was intentionally registered and then used in this case. This is thus an instance of typosquatting, which clearly falls within the scope of the example given in UDRP Paragraph 4 (b) (iv) so far as intentionally attracting Internet users is concerned through creating a likelihood of confusion. (Paragraph 4 (b) (iv) reads: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location".)

The Respondent being a commercial undertaking, the likelihood is also that in the circumstances of the present case an unfair commercial advantage was sought, so falling within the remaining scope of the UDRP bad faith example just cited.

The Panel is aware of no facts that would alter or mitigate its finding of bad faith.

The Panel has based this finding on the need to examine the Respondent’s likely intention in circumstances suggesting typosquatting. It considers that, even if proximity of characters to another name alone can be sufficient in a particular case to give rise to a presumption of bad faith, as could be found in the oft-cited WIPO Case No. D2004-0143 (Nature et Découvertes v. Découverte 3 Valées Ballon d’Alsace), the nature of “bad faith” – which necessarily connotes an element of wrongful intention – requires the Panel still to examine whether such intention exists in the facts of a case; reliance on proximity of characters alone will be adequate only in a case sufficiently flagrant as to make a finding of intention peremptory. This was not the situation in the present case.

For the above reasons, the Complaint is accepted and the domain name in dispute “youglass.com” is to be transferred to AGC Flat Glass Europe.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **YOUGLASS.COM:** Transferred

PANELLISTS

Name	Kevin J. Madders
------	------------------

DATE OF PANEL DECISION	2011-01-18
------------------------	------------

Publish the Decision	
----------------------	--