

Decision for dispute CAC-UDRP-100376

Case number	CAC-UDRP-100376
Time of filing	2012-04-18 09:47:34
Domain names	wwwtycoelectronics.com

Case administrator

Name	Tereza Bartošková (Case admin)
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Complainant

Organization	Tyco International Services GmbH
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Complainant representative

Organization	Čermák a spol.
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Respondent

Name	Milan Kovac
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant hold a substantial number of trademarks and trade names with the keywords "TYCO" and "TYCO ELECTRONICS":

- TYCO Community nominative trademark n°1585785, with priority as of 24 November 1999, registered on 15 May 2007 for goods in Classes 10, 17 and 20
- TYCO Community nominative trademark n°4718763, with priority as of 24 November 1999, registered on 7 July 2006 for goods and services in Classes 1,3,5, 6,7,9,11,16,35,37,38,39,40 and 42.
- TYCO ELECTRONICS Community nominative trademark n°5931381, with priority as of 10 November 2006, registered on 9 June 2009 for goods and services in Classes 7,8,9,17,37 and 38.
- TYCO Slovak National Trademark n°202956, with priority as of 16 December 1999, registered on 9 June 2003 for goods and services in Classes 1,2,6,7,9,11,16,17,20,35,37,38,39,40, and 42.
- TYCO Slovak National Trademark n°198685, with priority as of 24 November 1999, registered on 15 April 2002 for goods in

Classes 3,5 and 10.

- TYCO Czech National Trademark n°239981 with priority as of 23 March 2000, registered on 25 January 2002 for goods and services in Classes 1,2,3,5,6,7,9,10,11,16,17,20,35,37,38,39,40 and 42.

- International Trademark TE TYCO ELECTRONICS n°925163 with priority as of 14 December 2006, registered on 13 April 2007 for goods and services in Classes 7,8,9,17,37 and 38.

- International Trademark TYCO ELECTRONICS n°924416 with priority as of 10 November 2006, registered on 9 March 2007 for goods and services in Classes 7,8,9,17,37 and 38.

- International Trademark TYCO ELECTRONICS n°924418 with priority as of 10 November 2006, registered on 9 March 2007 for goods and services in Classes 7,8,9,17,37 and 38.

The Complainant holds others trademark rights that are mentioned in the exhibits.

FACTUAL BACKGROUND

The Complainant (Tyco International Services GmbH) is a company based in Switzerland, that designs and manufactures products in a variety of industries, including automotive, data communication systems, consumer electronics, telecommunications, aerospace, defense and marine, medical, energy and lighting.

The Complainant presents itself as a leading provider of electronic security products and services, fire protection and detection products and services, and serves customers in more than 60 countries all over the world. It is so that this company makes business under a large number of trademarks and domain names.

Tyco Electronics spun off from the Complainant (Tyco International) in June 2007 and became an independent stand-alone company. In March 2011, Tyco Electronics changed its name to TE Connectivity.

Tyco International Services GmbH is the owner of trademark registration for the mark "Tyco" and related trademarks for the companies of the TYCO and TE Groups that are registered worldwide from 1999 (see above) -

The Complainant is also the registrant of the numerous following generic and country level domain names, inter alia:

- tycoelectronics.com (registered on 28 July 1999)

- tyco.com (registered on 23 November 1998)

The Complainant was informed that the Respondent (M. Milan Kovac), apparently based in Bratislava, had registered on 10 October 2006 and updated on October 11, 2011 the domain name "wwwtycoelectronics.com". It is used for a so-called "parking site" which contains links and sponsored links (inter alia also to TYCO ELECTRONICS distributors)

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its prior rights in the signs "TYCO" and "TYCO ELECTRONICS", namely its domain names, trademarks and trade/company names (the use of which dates , for some, back to 1998,1999).

In the Complainant's view, "the phonetic, optical and conceptual similarity [between both sign] is such that the consumer, customer/internet user is going to be confused as to the provider of the respective goods and services. This confusion shall not be dispelled by the minor difference in adding the prefix "www" to the disputed domain name."

The Complainant contends that the Respondent has no rights or legitimate interest in the Domain. The Domain name is not being used to host any legitimate site. The website serves only as a click through page with links to other pages, and sponsored links meaning that the Respondent is being paid for placing such links on its web site. Therefore, according to the Complainant, the Respondent's sole purpose is to take advantage of typographical errors of its domain names.

The Complainant then asserts that the disputed domain name has been registered and is being used in bad faith. Given the renown of the Complainant's trademarks in the industry - "it being a leader in multi-field/multi business from consumer electronics (smart phones, satellites) energy and healthcare, to automotive, aerospace and communication networks"- when registering and using the domain name, the Respondent "had at least constructive knowledge of the Complainant's rights". Given the renown of the Complainant's trademarks, it is also "not conceivable that the Respondent chose the disputed domain name by chance (...) The registration took place with intent to appropriate Complainant's customers". Further, in the Complainant's view, "the use of domain names to divert internet users and to direct them to a webpage providing click through revenues to Respondent evidences bad faith. Respondent is taking unfair advantage of Complainant's trademark to generate profit (...)". According to the Complainant, there is typosquatting. "Respondent is attracting the internet users for commercial gain by creating a likelihood of confusion with the Complainant and its website".

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.

Pursuant to Complainant's request, the procedure is in English although the registration of the domain name is in Slovak. Respondent has been notified of the procedure – including this request. The notification of procedure has been made in Slovak and is therefore deemed to be understandable by Respondent. Respondent did not react, neither on this language issue, nor on the merits of the complaint. In such circumstances the Panel has no reason to believe that Respondent would be disadvantaged by using English. Also, Panel notes that the domain name at stake includes the English word 'electronics'; this is another more reason to conclude that the change of language is not detrimental for Respondent.

PRINCIPAL REASONS FOR THE DECISION

1) According to art.4 (a) (i) of the UDRP Policy, the Complainant must demonstrate that 'the domain name is identical or confusingly similar to a trademark or service mark in which he has right'.

- AS TO THE "TYCO" TM

The Panel finds that the difference between the disputed domain name and the Complainant's trademarks are insignificant to the overall impression "(cfr. BGL Group Limited v. Media Limited, ADR Case No. 100324)

It is generally settled that the gTLD suffix.com has not to be taken into account for the determination of the similarity. The Word "TYCO" forms in itself the most distinctive part of the domain name while the word "electronics" and the prefix "www" are less distinctive term.

The prefix "www" is merely a generic succession of letters used on internet in each URL address and the word "electronics" is a descriptive term which is included in the wording of the complainant's trademarks, domain names as well as in its trade/company name.

Then, since the words "tyco" and "electronics" are mentioned in both domain names and trademarks, the risk that the public might believe that the domain name is linked to the trademarks of the complainant and may therefore mislead, is then real – even more since Complainant is active in the electronic industry.

- AS TO THE "TYCO ELECTRONICS" TM

Based on comments here above, similarity is undisputable.

Accordingly, the Panel finds that Complainant has successfully proved that 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).

2) As to the second condition, in the opinion of the Panel, Complainant has made a prima facie case that the Respondent lacks rights or legitimate interest in the domain name. This is particularly true as the Respondent is not commonly known by the domain name nor has it acquired trademark rights. The Respondent is not using the domain name in connection with a bona fide offering of goods or services. He is using the domain name to host a web page with sponsored links to other pages, which reveals its intent for commercial gain to misleadingly divert consumer or to tarnish the famous marks of the Complainant.

3) The panel shall only assess the question of the TYCO ELECTRONICS TM, since it is sufficient to conclude.

Registration of the domain name by Defendant predates the registration of the "TYCO ELECTRONICS" CTM and International trademarks (March/April 2007, June 2009) by Complainant.

In the opinion of the Panel, this sole circumstance does not allow to conclude to the non compliance with the third condition. The Panel refers to the ADR Decision n°05891 (REDTUBE.EU), "In the Panel's view, even if there was no protected right in the name of Complainant at the time of registration with the consequence that Respondent could register the domain name without breaching the right/legitimate interest test, there can still be bad faith case if:

- The term, although not protected by a registered trade mark, was already used by Complainant in a trade mark sense (i.e. in a non-descriptive and non-generic sense to refer to the origin of the relevant services); and

- Respondent was aware of such use; and

- Respondent sought by reason of the registration to take unfair advantage of that non-descriptive and non-generic term."

In the circumstances of this case, the Panel finds that the Complainant has shown that the Domain Name has been registered and used in bad faith.

Notably, in the absence of Response, the Panel infers that the Respondent had the Complainant's trademarks in mind when registering the Domain Name which was therefore registered and is being (passively) used in bad faith. It has been demonstrated that the Respondent could not ignore the existence of Tyco International Services GmbH (the Complainant) and its well-know reputation. The Panel refers to the Complainant's contentions regarding its others earliest trademark registrations for TYCO, the domain name registrations (tyco.com and tycoelectronics.com), and the earliest use of the trade names (TYCO and TYCO ELECTRONICS), as well as all the explanations regarding the history and evolution of its 'old' company (1998). Therefore, the Respondent's intention was clearly to take advantage of a typographical error in relation with the Complainant's trademarks.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. WWWTYCOELECTRONICS.COM: Transferred

PANELLISTS

Name **Mr. Etienne Wéry**

DATE OF PANEL DECISION **2012-05-29**

Publish the Decision
