Decision for dispute CAC-UDRP-100511

Case number	CAC-UDRP-100511
Time of filing	2012-10-02 21:25:59
Domain names	gostrf.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Name	Sergey Aleksandrovich Tunkin

Respondent

Name	Fundacion Private Whois

OTHER LEGAL PROCEEDINGS

There are no legal proceedings pending, or decided which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant asserts that it has been the prior owner of the disputed domain name that it registered on October 8, 2008.

He suddenly discovered that the domain name had been transferred on August 15, 2012 to a third party who used a privacy service for that purpose.

The Complainant asserts that the disputed domain name is identical or confusingly similar to a service mark in which the Complainant has rights. He relies on its use of the “gostrf” mark since 2008 and on “its presence on the Internet through the Domain Name <gostrf.com>” during 4 years. He declares that the website www.gostrf.com “had a good reputation in the Internet as a professional portal with technical documentations, laws and national standards of Russian Federation”.
He concludes that “the Respondent uses Domain Name <gostrf.com> which is entirely reproduced in the disputed Domain Name”.

The Complainant does not give any other explanation on the service mark on which the complaint is based.

The disputed domain name has been registered using a privacy service on August 15, 2012.

After the Complaint has been transmitted to the Registrar, the registrant has been identified as the Fundacion Private Whois, which is the name of the privacy Whois service.

FACTUAL BACKGROUND

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

(A) The domain name is identical or confusingly similar to a service mark in which the Complainant has rights; (Policy,

Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))
The Complainant has been using the “gostrf” mark since 2008. It had its presence on the Internet through the Domain Name “gostrf.com”. The Complainant created the site www.gostrf.com, worked at it during 4 years to do it more popular and interesting for the people. The site www.gostrf.com had a good reputation in the Internet as a professional portal with technical documentations, laws and national standards of Russian Federation.
The Respondent uses Domain Name “gostrf.com” which is entirely reproduced in the disputed Domain Name.
(B) The Respondent has no rights and legitimate interests in respect of the domain name; (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))
The Respondent has no rights or interests in the disputed Domain Name. The Respondent never had authorization from the Complainant to register the disputed Domain Name.
Additionally, there is no indication that the Respondent has any legitimate interest in the disputed Domain Name. He has not received any license or consent to use the domain “gostrf.com” from the Complainant. He has no trademark or well-known service mark of the disputed Domain Name. The disputed Domain Name contains sponsored links including links for the adult and other materials with not clean reputation and purposes. This activity of the Respondent damages the reputation of the Complainant and its marks "gostrf". That makes it clear that the Domain Name has been registered and is being used with a view of commercial gain. Finally, the Respondent’s bad faith is also demonstrated by the fact that he was ready to sell the Domain Name to the Complainant.
(C) The domain name was registered and is being used in bad faith. (Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))
The transfer of domain “gostrf.com” was done without Complainant's resolution and against his will. The Respondent never had authorization from the Complainant to register the disputed Domain Name.
Respondent has registered the disputed Domain Name in order to prevent the Complainant from using disputed Domain Name in his doing. The Domain Name has been registered and is being used by Respondent in bad faith since the circumstances described by the Complainant above indicate that the Respondent registered the Domain Name primarily for the purpose of selling it and for commercial gain.
The Respondent has never been commonly known by the Domain Name and doesn't demonstrate preparations to use the Domain Name in connection with a bona fide offering of goods or services.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant asserts that it has been the prior owner of the disputed domain name that it registered on October 8, 2008.

He relies on <gostrf.com> as a service mark.

He suddenly discovered that the domain name had been transferred on August 15, 2012 to a third party who used a privacy service for that purpose.

(B) The Respondent has no rights and legitimate interests in respect of the domain name; (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))
The Respondent never had authorization from the Complainant to register the disputed Domain Name.
There is no indication that the Respondent has any legitimate interest in the disputed Domain Name. He has no trademark or well-known service mark of the disputed Domain Name and he registered the Domain Name primarily for the purpose of selling it and for commercial gain.
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(C) The domain name was registered and is being used in bad faith. (Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

The disputed domain name has been transferred without the Complainant's consent.
The Respondent’s bad faith is demonstrated by the fact that he was ready to sell the Domain Name to the Complainant, whereas the disputed domain name was used in circumstances that damage the Complainant's image.

RIGHTS

The Complainant has not shown 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).

The Panel decides on the basis of the amended complaint and of the attached exhibits that have been translated into English, which is the language of the proceeding.

The burden of proof lies on the Complainant.
Paragraph 4(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the domain name of the Respondent be transferred to the Complainant:
1) The domain name is identical or confusingly similar to a trademark or service mark ("mark") in which the Complainant has rights; and
2) The Respondent has no rights or legitimate interests in respect of the domain name; and
3) The domain name has been registered and is being used in bad faith
Pursuant to Paragraphs 3(b)(viii), (b)(ix)(1) of the Rules, the Complainant has to:
“(viii) Specify the trademark(s) or service mark(s) on which the complaint is based and, for each mark, describe the goods or services, if any, with which the mark is used (Complainant may also separately describe other goods and services with which it intends, at the time the complaint is submitted, to use the mark in the future).
(ix) Describe, in accordance with the Policy, the grounds on which the complaint is made including, in particular,
(1) the manner in which the domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights”.

The Complainant does not prove that it is the owner of a GOSTRF trademark. He just refers to the disputed domain name <gostrf.com> and explains that it has been “stolen” He does not claim any right on a registered trademark and does not argue on any possibility to claim a right on a non-registered trademark in Russia. In fact a non-registered trademark is not protected in Russia.

NO RIGHTS OR LEGITIMATE INTERESTS

Since the Complainant has not met the first condition provided by Policy, Paragraph 4(a)(i) and by the Rules, Paragraphs 3(b)(viii), (b)(ix)(1), there is no need for the Panel to further examine the case.

BAD FAITH

Since the Complainant has not met the first condition provided by Policy, Paragraph 4(a)(i) and by the Rules, Paragraphs 3(b)(viii), (b)(ix)(1), there is no need for the Panel to further examine the case.

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

The Complainant is required under paragraph 4(a)(i) of the Policy to prove that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

Since the Complainant does not fulfil the first condition of the Policy, to have rights in a mark, to which the domain name <gostrf.com> may be identical or confusingly similar, there is no need to enter into a discussion whether the Respondent has rights or legitimate interests in that domain name and whether it registered and has been using it in bad faith.
Therefore, the Panel is of the opinion that the Complainant has not met the first condition set forth by paragraph 4(a)(i) of the Policy.
The UDRP does not aim at resolving a dispute based on the assertion that the disputed domain name has been stolen from the Complainant.
The Panel does not exclude that, in a juridical case the Complainant may succeed in a court against the registration and use of the domain name <gostrf.com> by the Respondent.
However, under the Policy the request of the Complainant must be denied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **GOSTRF.COM**: Remaining with the Respondent

PANELLISTS

Name	**Marie Emmanuelle Haas**

DATE OF PANEL DECISION 2012-11-02

Publish the Decision