Decision for dispute CAC-UDRP-100510

Case number	CAC-UDRP-100510
Time of filing	2012-10-10 13:06:21
Domain names	blogtemplate4u.com , dhetemplate.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	CW Website Portfolio LLC

Respondent

Name	Anri Tepelikyan

OTHER LEGAL PROCEEDINGS

The panel is not aware of the existence of other proceedings concerning the disputed domain name.

IDENTIFICATION OF RIGHTS

Unregistered trademark rights in the names blogtemplate4u and dhetemplate.

FACTUAL BACKGROUND

The Complainant, CW Website Portfolio LLC., is a company located at Arizona (USA) which provides blog templates by the internet through the web sites http://blogtemplate4u.com/ and http://www.dhetemplate.com/.

The Complainant states that the domain names “blogtemplete4u.com” and “dhetemplate.com” have been transferred to the Respondent by an unidentified and unauthorized person using the Complainant´s username and password.

The Complainant relies on previous rights regarding the aforementioned domain names, arising from the use of two trademarks, named “blogtemplete4u” and “dhetemplate”, and from the web sites of which the complainant appears as the owner.

The Complainant also claims that the Respondent has no rights or legitimate interest in the domain names, and registered them and is using them in bad faith.

The respondent filed no response to the complaint.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant on its brief upholds that:

The domain names were previously registered by CW Website Portfolio LLC and an unidentified and unauthorized person used their username and password to log into their account and transferred the Domain names (blogtemplate4u.com and dhetemplate.com) to another Registrant (Anri Tepelikyan) and Registrar (OnlineNICInc). But on both websites it appears on the section “domain name owner” that the domain names are owned by CW Website Portfolio LLC, showing also a street address that coincide with the domicile of the Complainant.

The Domain names are identical to the trademarks “blogtemplate4u” and “dhetemplate” in which CW Website Portfolio LLC has rights. The Complainant has been using and continues using these trademarks for conducting business activities.

The Respondent does not have any rights or legitimate interests in the domain names. It is not involved in business activities, it has not been commonly known by the domain names and does not make a legitimate use of them.

The domain names have been registered and are being used in bad faith because there is evidence indicating that the Respondent has acquired the domain names primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to CW Website Portfolio LLC, that is the owner of the trademark.

RESPONDENT:
The Respondent was notified that an administrative proceeding has been commenced against it pursuant to the Uniform Dispute Resolution Policy and Rules.
The Respondent never accessed the online platform.
The commencement of this proceeding was October, 15th, 2012, which means that the due date for the submitting the response was the 5th of November 2012.

Since no response was filed by the Respondent, on the 6th of November 2012 the Czech Arbitration Court declared him in default, in accordance with the Rules for UDRP and the UDRP Supplemental Rules of the Czech Arbitration Court, and advised him accordingly.

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

Now, with reference to the grounds of the present resolution, and in accordance with the provisions of Paragraph 4 (a) of the Policy, there are three elements the Complainant must prove in order to have the domain name registered by the Respondent assigned in his favor.

These elements are:

(i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights,
(ii) The Respondent has no right or legitimate interests in respect of the domain name, and,
(iii) The domain name has been registered and is being used in bad faith.

Now, if we take into account the brief filed by the Complainant as well as the documents attached thereto, it is clear that the disputed domain names (“blogtemplate4u.com” and “dhetemplate.com”) are identical or confusingly similar to the unregistered trademarks (“blogtemplate4u” and “dhetemplate”), on which it holds rights.

Regarding the need to prove that the disputed domain names are identical or confusingly similar to the trademarks in which the Complainant has rights, the truth is that the Complainant has not demonstrated that has registered the trademarks but despite of that the Complainant attached to the complaint two screenshots that indicate that CW Website Portfolio LLC is the owner of the websites http://blogtemplate4u.com/ and http://www.dhetemplate.com/.
In both screenshots the Complainant appears like the owner, and the panel has been able to verify through the website http://whois.domaintools.com/ that the respondent appears as registrant, but the address on the website belongs to the Complainant.

The complainant was required by the Panel to input additional documents proving its trademark rights to the names "blogtemplate4u" and "dhetemplate” and any documents proving their use by CW Website Portfolio LLC.

The Complainant attached to this procedure two invoices regarding hosting agreements indicating that CW Website Portfolio LLC pays the hosting for the websites referring to blogtemplate4u.com and dhetemplate.com. This documents show that the Complainant is currently paying a quote for the domain names that are being claimed.

In relation to the use by the Complainant, the Panel has been able to verify that the Complainant has used in the web www.facebook.com the domain name "blogtemplate4u" since April, 1st, 2010 and the domain name "dhetemplate" since April 2nd, 2011.
Based on the above, the Panel concludes that the Complainant has been using the names "blogtemplate4u" and "dhetemplate" in the trademark sense prior to the Respondent´s registration of the domain names "blogtemplate4u.com" and "dhetemplate.com”.

Taking into account that the disputed domain names registered by the Respondent are "blogtemplate4u.com" and "dhetemplate.com”, the Panel understands that the Complainant has demonstrated that such names are not only confusingly similar to their unregistered trade marks, but practically identical.

On the other hand, and as far as the second requirement is concerned, this is to demonstrate that the Respondent does not have any right or legitimate interest with respect to the domain names in question, this Panel has proceeded:

a) To introduce in several searches of Internet the expression “dhetemplate” having realized that on every occasion the first result obtained invites us to visit a web page of the Complainant, http://www.dhetemplate.com/ with the message “Domain Owner: CW Website Portfolio LLC, Domain: DHETemplate.com, Address: 908 W Chandler Blvd Ste D, City, ST: Chandler, AZ 85225 USA”.
b) To repeat the same operation using the expression “blogtemplate4u” having realized that on every occasion the first result obtained invites us to visit a web page of the Complainant http://blogtemplate4u.com/, and after checking the terms of service (ToS) we obtain the same result as before, that is the message “Domain Owner: CW Website Portfolio LLC, Domain: DHETemplate.com, Address: 908 W Chandler Blvd Ste D, City, ST: Chandler, AZ 85225 USA”.

The above means that there cannot be found any connection between the Respondent and the domain names in dispute, "blogtemplate4u.com" and "dhetemplate.com”. To the contrary, the disputed domain names appear to be owned by the Complainant.

The Respondent has no rights or legitimate interest in respect of the domain name and the disputed domain names have been registered and are being used in bad faith by the Respondent, creating a likelihood of confusion with the Complainant´s

trade marks and services.

Furthermore and besides all of the above, this Panel equally must point out that (i) the Respondent has not responded to the Complaint and (ii) it is not known by the domain names in dispute; both are something that without any doubt must be taken into account.

Based on the above the Panel states that the Complainant has demonstrated that each and every one of the requirements demanded for an application of the provisions of Paragraph 4 (a) are met and consequently considers that the Complaint must be admitted and the disputed domain names transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BLOGTEMPLATE4U.COM** : Transferred
2. **DHETEMPLATE.COM**: Transferred

PANELLISTS

Name	**Enrique Batalla**

DATE OF PANEL DECISION 2012-11-21

Publish the Decision