Decision for dispute CAC-UDRP-100767

Case number	CAC-UDRP-100767
Time of filing	2014-02-28 16:35:11
Domain names	HARMONIEPREVENTION.COM

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	HARMONIE MUTUELLE

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Tim Lee

OTHER LEGAL PROCEEDINGS

The panel is not informed of other legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has shown that Complainant owns numerous trademark registrations containing the term “HARMONIE” in France:

- GROUPE HARMONIE n° 4018586 dated of July 9, 2013
- HARMONIE PROTECTION PLUS n° 3750989 dated of July 2, 2010
- HARMONIE MUTUELLLE + device, n° 3833162 dated of May 20, 2011
- HARMONIE PREVOYANCE SERVICES, n° 3884720 dated of December 27, 2011
- UNION HARMONIE MUTUELLES + device, n° 4048780 dated of November 20, 2013
- PREVOYANCE CONSEIL GROUPE HARMONIE, n° 4044919 dated of November 5, 2013
- HARMONIE MEDICAL SERVICE + device, n° 4048775 dated of November 20, 2013
- HARMONIES SERVICES MUTUALISTES + device, n° 4048754 dated of November 20, 2013
- FONDATION HARMONIE SOLIDARITES + device, n° 4048745 dated of November 20, 2013
- HARMONIE AMBULANCE + device, n° 4048760 dated of November 21, 2013

The Complainant states that he also owns several domain names, which include harmonie-prevention.net;

harmonieprevention.net; harmonieprévention.org; harmonieprévention.net; harmonieprévention.fr; harmonieprevention.org; harmonie-prévention.org; harmonie-prévention.net; harmonie-prévention.fr; harmonie-prevention.org.

This is not contested by the Respondent

FACTUAL BACKGROUND

The Complainant has been engaged in the field of insurance.

The domain name at issue was registered on February 20, 2014.

The Complainant relies upon several registered trademarks comprising the term HARMONIE. The Complainant has produced a number of copies of French trademark registrations in association with numerous services including insurance.

On March 4, 2014, the Complainant sent an e-mail to the Respondent claiming that the Respondent's registration and use of the domain name in dispute infringe on the Complainant's rights and requesting the Respondent to immediately cease all use of <harmonieprevention.com> and to transfer the domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the domain name at issue is confusingly similar to its trademark and domain name registrations. As a consequence, the Complainant contends that it should indisputably be considered that the Complainant has trademark rights on the sole wording HARMONIE and/or combined with terms in the insurance vocabulary.

Furthermore, the Complainant alleges that the Respondent does not have any legal rights or legitimate interests in the domain name and is not related to the Complainant's business in any way.

Finally the Complainant argues that the domain name has been registered and used in bad faith by the Respondent. According to the Complainant, the Respondent has used a false identity and has registered the domain name to take advantage of the reputation of Complainant's trademarks and for commercial gain.

RESPONDENT:

The Respondent denies all of the contentions raised by the Complainant in the Complaint and in its additional submission.

The Respondent denies the allegations by which the Complainant would own common law registered trademarks on 'HARMONIE' and also refutes the assertions by which the domain name would be confusingly similar to the Complainant's trademarks.

The Respondent argues that it has a legitimate right and/or interest on the domain name and that the domain name has been registered and is used in good faith.

The Respondent also asks the Panel to make a finding of reverse domain name hijacking, pursuant to paragraph 15(e) of the Rules.

RIGHTS

Based on the undisputed multiple trademark registrations cited by the Complainant as listed above the Panel is satisfied that the Complainant has rights in trademarks comprising the term "HARMONIE". The Respondent did not challenge these allegations.

Many of the Complainant's trademarks are formed with the term "HARMONIE" followed by a generic term in relation with insurance or health services. The Complainant does not hold any trademark "HARMONIE PREVENTION". Therefore the Panel finds that the domain name is not identical to the trademark registration held by the Complainant.

However, in light of the resemblances between the trademark registrations and the domain name, the Panel has to consider visual, phonetic and intellectual similarity. Visually, the domain name is close to the trademarks held by the Complainant. Indeed the term "HARMONIE" found in the domain name at issue is also found on every trademark held by the Complainant. The second part of the domain differs. Phonetically, the Panel finds an identity on the term "HARMONIE" and a similarity of the term "PREVENTION" with the second part of the trademark "HARMONIE PROTECTION PLUS". Moreover the domain name is intellectually similar to the trademark rights of the Complainant insofar as the term "HARMONIE" is the same and the term "PREVENTION" is part of the insurance vocabulary.

The Panel is of the opinion that the generic top-level domain ".com" should not enter into consideration when comparing the domain name at issue with Complainant's trademarks.

The Respondent alleges that many domain names carry the term "HARMONIE" associated with another generic term and therefore he has the right to use the domain name at issue. The Panel finds that the present dispute is about one domain name only and the Panel will not decide on other domain names.

Therefore the Panel finds that the domain name at issue is confusingly similar to the trademarks of the Complainant. The first condition required to be satisfied under paragraph 4(a)(i) is therefore fulfilled.

NO RIGHTS OR LEGITIMATE INTERESTS

According to paragraph 4 (c) of the Policy, the following circumstances shall demonstrate that a respondent has rights or legitimate interests to a domain name:

i) Before any notice of the dispute, the respondent has used, or made demonstrable preparations to use the domain name at issue in connection with a bona fide offering of goods or services, or
ii) the respondent has been commonly known by the domain name, even if he/she has acquired no trademark or service mark rights, or
iii) the respondent is making a legitimate noncommercial fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

According to the Complainant, the Respondent is not affiliated with, authorized by or otherwise related to the Complainant. The Complainant also contends that the Respondent is not commonly known by the domain name at issue since its Whois information is incorrect. Therefore, the Complainant has demonstrated that the Respondent has no rights or legitimate interest in respect of the domain name at issue.

The Respondent alleges a legitimate noncommercial use of the domain name without intent for commercial gain. Respondent has used the name in connection with a link farm parking page advertising the services of third parties in competition with Complainant. It is well-established that operating a link farm parking page using a distinctive trademark in a domain name, and providing connection to goods and/or services competitive with the trademark owner, does not establish rights or legitimate interests. See, e.g., VIVO S.A. and PORTELCOM PARTICIPAÇÕES S.A. v. Domains By Proxy - NA Proxy Account Niche Domain Proxy Manager, WIPO Case No. D2010-0925: Overstock.com, Inc. v. Metro Media, WIPO Case No. DME2009-0001.

Respondent's use of the disputed domain name in connection with a farm parking page is plainly commercial, and does not constitute "fair use" of Complainant's trademark. Respondent is using Complainant's trademark to attract Internet users to a website offering goods and services competitive with those of a business operated by Complainant. This does not provide a fair use justification for use of Complainant's trademark in the disputed domain name. Respondent's predominant purpose in using Complainant's trademark in the disputed domain name was and is to confuse Internet users into visiting its website

by suggesting sponsorship or endorsement by Complainant.

The Panel finds that this cannot be seen as legitimate noncommercial use. Indeed, Respondent has failed to rebut Complainant's prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name.

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

To succeed in an administrative proceeding, the Complainant must show not only that the domain name at issue is identical or confusingly similar to its registered trademark and that Respondent has no rights or legitimate interests to the domain name, but also that the Respondent registered and used the domain name in bad faith.

According to paragraph 4 (b) (ii) of the Policy, registration and use of a domain name in bad faith is demonstrated when in view of the evidence, the panel finds that the Respondent has registered the domain name at issue in order to prevent the owner of a trademark from reflecting the trademark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct.

The Complainant has submitted ample evidence and argument to support the conclusion that the registration of the disputed domain name was made in bad faith.

The Panel finds on a balance of probabilities that the Respondent was aware or ought to have been aware of the existence of the trademarks of the Complainant. This knowledge at the time of registration proves that the disputed domain name was registered in bad faith.

It was the Respondent’s duty to establish that the registration of the disputed domain name does not infringe on any rights or any third party. A quick Internet search would have revealed Complainant’s trademarks to the Respondent. Failure to do such a search is a contributory factor to bad faith.

Therefore, the Panel finds that Respondent has registered the domain name at issue in bad faith.

By creating a parking website that featured links to the Complainants’ competitors, the Respondent similarly used the domain name in bad faith. The purpose of this parking website clearly was to attract Internet users to the site, for profit, based on their confusing the Respondent’s domain name and/or website with the Complainant and/or its website. Once on the Respondent’s page, some users likely click on advertisers’ links, which presumably would confer a commercial benefit on the Respondent. The fact that the Respondent was willing to pay money to register or acquire this domain name, to continue to maintain it and to host the website, all are evidence that the Respondent expected to profit from the domain name in this way.

The Respondent alleges that the parking website is the default page of the Registrar when registering a domain name. Furthermore, the Respondent claims that he did not know of the advertising links and did not attempt to attract internet users to his website. However the Panel considers these statements to be mere allegations which are not supported by any evidence. Equally, the Respondent’s wish to “build an environmentally friendly public service website” is not supported by any evidence. The Panel therefore infers that the Respondent profited from the goodwill associated with Complainant’s trademarks by collecting click-through fees and that Respondent used the domain name in bad faith.

Furthermore, the Complainant states that the Respondent hid his identity thought privacy registration services and used several identities throughout the present proceedings. The Respondent does not refute these allegations. In light of the evidence brought forward by the Complainant, the Panel accepts this statement as accurate and finds that this is a contributory factor to the bad faith of the Respondent.

The above findings, together with the finding that the Respondent has no rights or legitimate interests in the disputed

domain name, lead the Panel to conclude that the disputed domain name was registered and is being used by the Respondent in 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

1) The domain name <harmonieprevention.com> imitates the Complainant's trademark rights. Visually and phonetically, the term "HARMONIE" is present in each trademark right submitted by the Complainant to support its complaint, and is reproduced in the domain name. Intellectually, the Panel finds that the similarity between the domain name and the trademark rights is very high.

2) The Respondent has no right or legitimate interest in the domain name at issue. The Respondent's claims of non-commercial use of the domain cannot be satisfied in light of the existing parking website. The Panel finds that the Complainant has brought forward sufficient evidence of the lack of right or legitimate interest on the part of the Respondent.

3) The Respondent has registered and used the domain name in bad faith. The Panel finds no legitimate use of the domain name, and finds that the Respondent should have known of the Complainant's trademarks. Furthermore the fact that the Respondent hid his identity is a contributory factor to bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **HARMONIEPREVENTION.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2014-04-17

Publish the Decision