Decision for dispute CAC-UDRP-100881

Case number	CAC-UDRP-100881
Time of filing	2014-12-12 13:11:24
Domain names	ESSURVEYMONKEY.COM , FRSURVEYMONKEY.COM

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	SurveyMonkey Inc.

Complainant representative

Organization	Matkowsky Law PC

Respondent

Name	Pauline Steblovnik

OTHER LEGAL PROCEEDINGS

These domains were originally subject to Administrative proceeding No.100858 before the privacy/proxy on the domains were unmasked. Complainant requested to have certain domains originally subject of that proceeding proceed in parallel as separate proceedings now that the curtain has been lifted on the privacy/proxy, and the CAC Provider has granted that request to file separate complaints with the fees to be determined after the filing, and to deliver the amended the complaint in Case 100858 by November 21, 2014.

IDENTIFICATION OF RIGHTS

The Complainant has established that he had prior rights in the international trademark SURVEYMONKEY.

FACTUAL BACKGROUND

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

Founded in 1999 at <surveymonkey.com>, the Complainant is the world's leading provider of web-based survey solutions with more than 43 million surveys completed and 2.2 million survey responses daily. The Complainant has received numerous awards & recognitions and has been featured in widespread media outlets.

The Complainant has extensive common law rights in the mark SURVEYMONKEY (the "Mark") since 2000 and owns multiple registrations for the Mark covering its services, including CTM Reg. No. 1044546. Indeed, the Mark constitutes a famous and

well-known mark, as is corroborated by the Alexa Traffic Rank of <SurveyMonkey.com>. Over the past 3 months, based on a combination of average daily visitors and pageviews, the site is ranked within the top 500 sites worldwide, and within the top 250 sites in the United States.

The disputed domain name <essurveymonkey.com> was registered on February 21, 2014 and <frsurveymonkey.com> was registered on November 9, 2013.

The Complainant initiated an UDRP proceeding on November 13, 2014.

The Respondent failed to respond to the Complaint before the official deadline. On January 2, 2015, the Czech Arbitration Court declared him in default, in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) and the CAC's UDRP Supplemental Rules of the Czech Arbitration Court (the Supplemental Rules), and advised him accordingly.

As no administratively compliant Response has been filed in this case, a simplified decision is due.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain names are confusingly similar to the SURVEYMONKEY trademark 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 that the Respondent has no rights or legitimate interests in respect of the domain names (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 names have been registered and are 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 Complainant has established that it had prior rights in the trademark SURVEYMONKEY. The Panel finds that Complainant's trademark is entirely incorporated in the disputed domain names. This thus amounts to a case of typosquatting. The disputed domain names reflect intentional typographical errors, as the punctuation between the country code abbreviations "fr" and "es" and the second level domains, is intentionally omitted. As commonly used for localization, when typing fr.surveymonkey.com or es.surveymonkey.com, the localized version of the Complainant's website would appear. In any event, the addition of the generic terms "fr" and "es" do not preclude a finding that the disputed domain names are confusingly similar to Complainant's SURVEYMONKEY registered trademark. It has been persistently decided that the mere addition of a geographic descriptor does not change the confusing nature of the similarity, see e.g. Wal-Mart Stores, Inc. v. Lars Stork, WIPO Case No. D2000-0628; America Online, Inc. v. Dolphin@Heart, Telstra Corporation Limited v. Ozurls, WIPO Case No. D2001-0046, Playboy Enterprises International, Inc. v. Zeynel Demirtas, WIPO Case No. D2007-0768.

This Panel therefore finds that the first requirement of paragraph 4(a)(i) of the Policy is satisfied.

2. The Panel finds that the SURVEYMONKEY trademark is distinctive. The Complainant's assertions that the Respondent is not commonly known by the disputed domain names and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain names on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. The Respondent has made no attempt to do so.

Furthermore, the Respondent does not appear to make any legitimate use of the domain names for non-commercial activities.

Similarly like the Panel in UDRP decision No. 100858 SurveyMonkey Inc. vs Domain Admin, Private Registrations Aktien Gesellschaft, this Panel finds that the content displayed on the relevant web pages at the time of the complaint reflects no bona fide use or offering of goods or services.

Therefore, in the absence of any response from the Respondent indicating the contrary, the Panel finds that Complainant has satisfied the burden of proof with respect to paragraph 4(a)(ii) of the Policy.

3. The Respondent is using the domain names in order to attract, for commercial gain, Internet users to their website by creating a likelihood of confusion with Complainant's trademark, which is an indicator of bad faith according to paragraph 4 (b)(iv). The Respondent uses the disputed domain names for pay-per-click pages including links to the websites of Complainant's competitors.

The Complainant provided evidence that the Respondent registered the disputed domain names with the clear intention to benefit from the likelihood of confusion with the Complainant's trademark.

Considering the foregoing, the Panel concludes that the Respondent registered and is using the Domain Names in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy are satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ESSURVEYMONKEY.COM** : Transferred
2. **FRSURVEYMONKEY.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2015-01-16

Publish the Decision